



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-second session

SUMMARY RECORD OF THE 1245th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 2 March 1998, at 10 a.m.

Temporary Chairman: Mr. ter HORST
Chairman: Mr. ABOUL-NASR

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GE.98-15409 (E)

The meeting was called to order at 10.55 a.m.

OPENING OF THE SESSION BY THE REPRESENTATIVE OF THE SECRETARY-GENERAL (item 1 of the provisional agenda)

1. The TEMPORARY CHAIRMAN (Deputy High Commissioner for Human Rights and Representative of the Secretary-General) declared open the fifty-second session of the Committee on the Elimination of Racial Discrimination.

Statement by the Deputy High Commissioner for Human Rights

2. The TEMPORARY CHAIRMAN, speaking on behalf of himself and the High Commissioner for Human Rights, congratulated those members of the Committee who had been re-elected at the seventeenth meeting of States parties to the Convention. He also welcomed the newly elected members of the Committee, namely, Ms. Gay McDougall of the United States of America and Mr. Peter Nobel of Sweden, and paid tribute to Mr. Chigovera and Mr. Ahmadu whose terms of membership had ended.

3. Drawing attention to various developments of particular interest that had taken place since the Committee's last session, he noted that Saudi Arabia and Kyrgyzstan had acceded to the International Convention on the Elimination of All Forms of Racial Discrimination, thereby bringing to 150 the total number of States parties. Similarly, Spain's recent declaration brought to 25 the number of States that had made the declaration under article 14.

4. The General Assembly, in its resolution on the report of the Committee on the Elimination of Racial Discrimination (A/RES/52/110), had commended the Committee for its work and especially its consideration of reports under article 9 and communications under article 14, its efforts to review the implementation of the Convention in States whose reports were seriously overdue, and its work to prevent racial discrimination through the use of its early warning and urgent procedures. It had encouraged the Committee to continue its cooperation with the High Commissioner, the Sub-Commission and the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance. In that regard, he was particularly encouraged by the collaboration between the Sub-Commission and the Committee with a view to elaborating a joint working paper on article 7 of the Convention, and hoped that that would set a precedent for more substantive collaboration between various human rights entities with responsibility for combating racial discrimination.

5. Moreover, the General Assembly had decided, in its resolution on the Third Decade to Combat Racism and Racial Discrimination, to convene a world conference on racism and racial discrimination not later than the year 2001. It had also decided that the world conference would be action-oriented and focus on practical measures to eradicate racism, taking fully into consideration existing human rights instruments, and that the Commission on Human Rights would act as the preparatory committee. It had further requested the Committee to assist the preparatory committee and to submit recommendations concerning the conference and preparation thereof through the

Secretary-General. It had also welcomed the seminar held in 1996 on the role of Internet in connection with the dissemination of the provisions of the Convention.

6. Recalling the work done by the eighth regular meeting and the special meeting of chairpersons of treaty bodies held at Geneva, he thanked the Committee for its contribution to the debate on how the treaty system could be further streamlined.

7. The restructuring of the Office of the High Commissioner for Human Rights had been largely completed. A new team of professional and general support staff had been formed to service not only the Committee on the Elimination of Racial Discrimination but also the Committee against Torture and the Committee on the Rights of the Child.

8. The Office of the High Commissioner would continue to improve its efficiency, particularly by the continued development of its Web site.

SOLEMN DECLARATION BY THE NEWLY ELECTED MEMBERS OF THE COMMITTEE UNDER RULE 14 OF THE RULES OF PROCEDURE (item 2 of the provisional agenda)

9. The TEMPORARY CHAIRMAN noted that Mr. Wolfrum, a re-elected member, as well as Ms. McDougall, a newly elected member, were absent.

10. In accordance with rule 14 of the rules of procedure, Mr. ABOUL-NASR, Mr. BANTON, Mr. de GOUTTES, Mr. LECHUGA HEVIA, Mr. SHAHI and Mr. SHERIFIS, re-elected members of the Committee, and Mr. NOBEL, Committee member newly elected at the seventeenth meeting of States parties to the Convention, made the following solemn declaration:

"I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee on the Elimination of Racial Discrimination honourably, faithfully, impartially and conscientiously."

ELECTION OF OFFICERS (item 3 of the provisional agenda)

11. Mr. BANTON said it was customary for each regional group in turn to nominate a candidate for the post of Chairman of the Committee. It was the African group's turn to do so in 1998, but unfortunately it was no longer represented in the Committee; the fact that that custom could no longer be followed had raised a number of problems and held up the beginning of work. On the basis of the unofficial consultations that had been held before the meeting, he nominated Mr. Aboul-Nasr for the Office of Chairman of the Committee.

12. Mr. Aboul-Nasr was elected Chairman by acclamation.

13. Mr. Aboul-Nasr took the Chair.

14. Mr. Diaconu, Mr. Sherifis and Mr. Yutzis were elected Vice-Chairmen by acclamation.

15. Mr. Banton was elected Rapporteur by acclamation.

ADOPTION OF THE AGENDA (item 4 of the provisional agenda)

16. The CHAIRMAN invited members of the Committee to take note of the provisional agenda contained in document CERD/C/339. Personally he regretted that it suffered from a number of shortcomings - for example there was no item on the question of the inhabitants of non-self-governing territories, which was the subject of article 15 of the Convention. It might therefore be useful, before it was adopted, for members of the Committee briefly to express their views on the subject as well as any objections they might have.

17. Mr. RECHETOV said that the most regrettable absence of the African group could well undermine the Committee's authority and the confidence it enjoyed.

18. He wholeheartedly endorsed the Chairman's observation concerning the shortcomings of the agenda. The absence of an item on non-self-governing territories was indeed most unfortunate. Moreover, in connection with item 7, he hoped that a more satisfactory solution could be found to the question of States which had failed to submit reports because they lacked personnel capable of preparing them or for other reasons. The outgoing Chairman had promised that that problem would be studied, but the case of certain States which had still not submitted their initial report was not even mentioned in document CERD/C/339. Estonia was one example, although it had apparently made great efforts to improve the situation of minorities. The States "whose initial report was seriously overdue" and in respect of which the Committee had intended to review the application of the Convention were all small countries which did not pose political problems, whereas much larger States had been overlooked.

19. He hoped that in future the choice of countries to be subjected to exhaustive questioning would be based on more clear cut criteria and, for example, that it would be stated explicitly after how many years the review procedure would be applied to a State that had not submitted a report.

20. Mr. VALENCIA RODRIGUEZ noted that the Committee had intended to examine the question of non-self-governing territories at its summer session. However, in view of the Chairman's observations, that matter could be included in the agenda of the present session.

21. The CHAIRMAN said that the Bureau would add that item to the agenda.

22. Mr. van BOVEN said he wished to make three short observations. First, he noted that certain countries in respect of which the Committee had intended to review the application of the Convention, such as Bahrain, Ghana, Mauritania or Portugal, had announced their intention of submitting a report at the next session and that that fact should possibly be taken into account; secondly, in connection with item 6 on early warning measures and urgent action procedures, he drew attention to the last sentence of the second paragraph on page 4 of document CERD/C/339, since it was very important that the Committee should, if necessary, be able to schedule on short notice consideration of the situation in other States parties if circumstances so required; thirdly, on the subject of non-self-governing territories, he pointed out that the argument presented in paragraph 648 of the Committee's report to the General Assembly (A/52/18), that "The Committee once again finds

it impossible to fulfil its functions under article 15, paragraph 2 (a) of the Convention, owing to the total absence of any copies of petitions as provided therein." could not be used indefinitely as an excuse. He had personally found that some of the documents in question were among those that had been distributed, and the Committee should decide to take the question up.

23. Mr. GARVALOV supported the proposals made by the Chairman and Mr. Rechetov. He also observed, in connection with agenda item 6, that there were cases, other than those mentioned in the provisional agenda, whose urgency justified consideration under that item.

24. He was of the view that the Bureau should give thought to the future of treaty bodies in the context of the restructuring of the United Nations system; the Committee should adopt a clear-cut position on the matter, and particularly on the proposals made by the Independent Expert, Mr. Alston, in his report on the effective functioning of the United Nations human rights treaty system (E/CN.4/1997/74).

25. Mr. BANTON pointed out that the Committee was unable to apply the review procedure to Estonia at an earlier date since it had decided to do so only when its report - which should have been submitted in November 1992 - was five years overdue.

26. Mr. SHAHI was of the opinion that, in view of the troubled situation in Kosovo at the present time, Yugoslavia's report should be considered under item 6 and not 7.

27. As rapporteur for Syria, he wondered whether the report he had received (CERD/C/197/Add.6) dating from 1991 would be considered on the basis of the review procedure or the procedure applicable to periodic reports submitted in good time.

28. Mr. HUSBANDS (Secretary of the Committee) explained that what Mr. Shahi had received was a preparatory document and that Syria had since submitted a report which had been in the Secretariat's possession for only three weeks.

29. In reply to Mr. van Boven, he explained that the countries which had requested postponement of the consideration of their situation were Bahrain, Bangladesh, Ghana, Mauritania, Portugal and Uruguay; they had undertaken to submit their reports before June 1998.

30. Mr. de GOUTTES wondered whether Haiti could be added to that list.

31. As for agenda item 6, he agreed with Mr. van Boven that the list of States in connection with which the Committee should apply the urgent action procedure must be left open.

32. The Committee could usefully discuss the most recent developments in countries that had accepted the amendment of article 8, paragraph 6 of the Convention and the reform of treaty bodies in the light of Mr. Alston's report as well as the article that had recently been published on the subject in the review of the United Nations High Commissioner for Human Rights. Since the

question had now been brought out into the open, the Committee could not refrain from considering it and expressing its views on the subject.

33. Lastly, the non-governmental organization ARIS (Anti-Racism Information Service), whose efficiency was appreciated by the Committee, had in December been awarded the French Republic's human rights prize and deserved the Committee's congratulations.

34. The CHAIRMAN reminded members that the discussion under way concerned the Committee's programme of work and suggested that they should deal with the questions raised by Mr. de Gouttes under other agenda items.

The meeting was suspended at 12.15 p.m. and resumed at 12.45 p.m.

35. Mr. BANTON said that the Bureau had agreed to add, after item 9 of the provisional agenda, a new item entitled "Consideration of copies of petitions and reports under article 15 of the Convention".

36. Mr. de GOUTTES wished to know under what item the Committee would consider the question of liaison between the Committee and various bodies dealing with human rights and racial discrimination. He recalled that, in the past, each member of the Committee had been asked to liaise with some of those bodies - either those comprising the United Nations system or regional bodies. Unfortunately, cooperation between the Committee and other bodies dealing with human rights or racial or ethnic discrimination was still in many cases inadequate. Since the matter should not be lost from view he requested its inclusion in the agenda.

37. The CHAIRMAN suggested that the question could be included under item 5 (Organizational and other matters). He added that, in the absence of objections, he considered that the Committee wished to adopt the provisional agenda, as amended. A new version of the annotations to the agenda, reflecting the suggestions made by the Bureau, would be communicated to the members of the Committee for adoption.

38. The provisional agenda, as amended, was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5)

39. Mr. BANTON, referring to paragraph 2 of the Acting Secretary's report (document in English without symbol distributed at the meeting), said that Syria had transmitted a new report to the Committee. The Bureau suggested that the Committee should wait until the report had been translated before considering the implementation of the Convention in that country. Moreover, Bahrain, Bangladesh, Ghana, Mauritania, Portugal and Uruguay had requested the Committee to defer to the fifty-third session, in August 1998, the consideration of their cases, so as to be able to submit a report before that date. The Bureau recommended that the Committee should accede to that request.

40. The Bureau also recommended that the Committee should in future consider that type of request case by case. Lastly, as only major topics had been

included in the draft programme of work, he suggested that the Secretariat should draw up a list of supplementary points that would be considered in due course during the session.

41. Mr. SHAHI pointed out that paragraph 4 of the list of documents for the session (document without symbol distributed at the meeting in English only) included a Seminar on the Role of Internet with regard to the provisions of the Convention, which was to be held in the framework of the Third Decade to Combat Racism and Racial Discrimination. Since that question did not appear in the proposed programme of work, he asked when it would be considered.

42. The CHAIRMAN proposed that it should be considered under agenda item 11 on the Third Decade.

The meeting rose at 1 p.m.



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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-second session

SUMMARY RECORD OF THE 1246th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 2 March 1998, at 3 p.m.

Chairman: Mr. ABOUL-NASR

later: Mr. YUTZIS

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CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Fourteenth periodic report of the Russian Federation

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7)

Fourteenth periodic report of the Russian Federation (CERD/C/299/Add.15)

1. At the invitation of the Chairman, Mr. Abdulatipov, Mr. Shahray, Mr. Zorin, Mr. Kehlerov, Mr. Tsagolov, Mr. Chtcherbak, Mr. Ramishvili and Mr. Tarasov (Russian Federation) took places at the Committee table.

2. Mr. ABDULATIPOV (Russian Federation), introducing the fourteenth periodic report of the Russian Federation (CERD/C/299/Add.15), said that his Government was striving to put into practice the principle enshrined in the Universal Declaration that all human beings were born free and equal in dignity and rights, which was of great importance for a multinational country like Russia. There had been ethnic discrimination against individuals and sometimes even against whole peoples in his country's recent past. The proclamation of democracy had freed the energies of peoples, and ensuring that such forces were used creatively was not an easy matter. His delegation would endeavour to reply to the comments made by members during consideration of the previous report in the course of the current dialogue.

3. The previous year had been one of political stabilization. Much had been done to integrate the main political forces in the political process and to reduce the influence of extremists. While considerable progress had been made in establishing democratic relations between nationalities on a firm legal footing, legislation passed on relations between nationalities had been insufficient, and 86 of the 270 laws approved by the Parliament had been vetoed by the President. Administrative law had not yet been subject to review, leaving a considerable task ahead.

4. The Committee had stressed the need to strengthen the judicial system. There had in fact been a fundamental change in that area. The current budget provided for a 50 per cent increase in allocations to the judiciary. Control of budget allocations would fall to a specially created judicial body coming under the Supreme Court. Legislation had also been passed on the police and judicial services. In another important decision, control of the prison system had been transferred from the Ministry of the Interior to the Ministry of Justice.

5. The prohibition of racial discrimination and the protection of the equal rights of citizens irrespective of nationality, language or religion were essential for Russia's existence as a multinational, multi-faith and multicultural State with 176 nationalities and ethnic groups. Only the federalist form of government, securely anchored in the Russian Constitution, could ensure cultural and political autonomy for Russia's nationalities in keeping with the constitutional precepts of equality and the self-determination of peoples and respect for the national integrity and territorial inviolability of the Russian Federation as a whole.

6. Measures were being taken to ensure balanced economic development in the various regions of the country and the same standards of social services for everyone regardless of nationality or territory of residence. President Yeltsin had recently reiterated the emphasis on the independent development and autonomous powers of the regions. Availing themselves of those powers, a number of republics and autonomous regions had adopted legislation guaranteeing the rights of national minorities and indigenous and small ethnic groups which even went beyond federal measures and contained special provisions preserving the distinctive culture of the peoples living in their territories and their right to remain in their traditional settlement areas and create their own autonomous cultural associations. Such provisions were clearly specified in the Constitutions of Buryatia, Bashkortostan, Dagestan, Komi, the Khanty-Mansi Autonomous Area and a number of other constituent entities of the Russian Federation. An unprecedented effort was under way to protect individual rights and freedoms irrespective of nationality, thereby complying with the Committee's recommendation at regional and local levels.

7. Decree No. 909, promulgated on 15 June 1996, had set priorities in the area of relations among the nationalities and coordinated the adoption of legislation at all levels. The National Cultural Autonomy Act, which had entered into force on 17 June 1996, guaranteed the cultural rights of citizens irrespective of place of residence and the right of national minorities to cultural autonomy. The period under consideration had witnessed the creation of 32 regional and 64 local cultural autonomous entities, as well as 2 at federal level, the "Russian Germans" and the "Russian Ukrainians". In 1998, a federal social, economic and cultural assistance programme was to be launched on behalf of the Russian Germans, funded jointly by the Russian Federation and Germany. Pursuant to article 7 of the Act of 18 December 1996, an Advisory Council for National Cultural Autonomy had been set up within the Russian Government. A number of health, social services, educational, cultural, development and environmental programmes, some of them referred to in paragraph 59 of the country report, were being implemented to support the small indigenous peoples of the Russian North.

8. On 1 January 1997, the Russian Federation's new Penal Code had entered into force, radically changing the relevant articles on criminal responsibility for all forms of discrimination. Article 63 of the Code provided that crimes which had motives of national, racial or religious hatred or enmity were punishable by law. The crime of genocide had been included in the Code for the first time (article 357). Activities aimed at fomenting national, racial or religious hatred or propagating exclusion, superiority or inferiority of citizens for reasons of national or racial origin had also been made criminal offences (article 282). In 1997, 21 persons had been charged with committing such offences; 8 had been convicted and sentenced.

9. Legislation prohibiting fascist propaganda was close to completion, the State Duma of the National Assembly having approved in second reading a bill to that effect in March 1997. A committee responsible to the President of the Russian Federation had been set up to halt the spread of racism, racial discrimination, xenophobia and anti-Semitism. Steps were being taken to put an end to discriminatory practices by local authorities directed against persons of other nationalities, especially in connection with recruitment.

Since the presentation of the previous country report, four decisions had been taken by the Constitutional Court relating to freedom of movement and rules governing registration at temporary and permanent places of residence. All such restrictions on the rights of citizens had been lifted. The residence permit (propiska) system had been abolished. A recent decision of the Court had liberalized the rules on registration, including for refugees.

10. Concerning the tragic problem of Chechnya, the federal authorities were pursuing their efforts to promote the peace process and to find a political solution to existing problems in a spirit of flexibility, restraint and willingness to compromise. As early as 1993, the Government had signed a protocol with the Chechen Parliament on the delimitation of powers and a special status for the Chechen Republic. Unfortunately, after signing the protocol, the Parliament had been dissolved by President Dudaev, and the agreements had not been honoured. His Government was currently proposing a twofold compromise solution offering Chechnya the broadest possible autonomous status, with the Russian Federation losing a minimum of sovereignty. It was unfortunate that the sole proposal by the Chechen leadership had been nothing less than full separation from the Federation. Moscow sought peace, whereas the Chechen leadership continued to talk about victory.

11. Parallel to the negotiating process, a number of programmes were under way for reviving the economy and normalizing life in Chechnya. A State commission to rebuild the Chechen Republic had been set up. An interim interdepartmental commission of the Russian Federation Security Council had been created for the development of the Chechen Republic and normalization of the situation in the North Caucasus region. A number of government social and economic programmes were being implemented in Chechnya. An agreement had recently been reached on the payment of pensions and subsidies in Chechnya until the end of the year. President Yeltsin had issued a special decree to ensure employment for refugees, including Chechens, from Chechnya. But any solution to the Chechen problem required time and patience.

12. Given the short period involved, the progress made in Russia along the path to democracy had been considerable. National legislation and practice in the field of human rights protection were moving closer to international standards, as evidenced by the ratification by the Russian Parliament on 20 February 1997 of the European Convention on Human Rights and the European Convention for the Prevention of Torture. His Government would also be giving consideration to the European conventions on minorities and local self-government. Russia's problems could only be resolved by strengthening democracy and the rule of law and by protecting the rights of all people, irrespective of their nationality. His delegation was convinced that an open and constructive dialogue with the Committee would help the Russian Federation in achieving the high standards enshrined in the Convention, and it was prepared to reply in depth to any questions which members might wish to ask.

13. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) said that the report had taken into account a number of the points raised in the Committee's concluding observations on the previous report. The Committee should proceed on the basic assumption that Russia was a democratic federal State based on the rule of law. He appreciated the information provided on the ethnic make-up of the population of a country with so broad an ethnic and cultural composition and

such a variety of minorities, but asked what criterion had served as a basis for the ethnic classification set out in Annex I. In some cases, it seemed that no distinction was made between the concept of ethnicity or ethnic origin and that of national group, as could be seen by the reference to Latvians, Cubans, Slovaks, Italians, Americans and so on. Were the latter considered to be ethnic groups? Could the Russian delegation further comment as to why a distinction was apparently made between asylum seekers from the Baltic countries and the Commonwealth of Independent States, and those from elsewhere?

14. He drew attention to the consequences for the population, notably the institutional vacuum and unemployment, of the recent political changes, a matter already raised by the Committee against Torture.

15. The Committee appreciated the fact that the Russian Constitution established an adequate legal framework for the enjoyment of political, social and economic rights. Article 55 of that instrument stated that the enumeration in the Constitution of basic rights and freedoms should not be interpreted as a denial or diminution of other universally recognized human and civil rights and freedoms. However, it must be reiterated that, as had already been acknowledged by the delegation during the presentation of the previous report (CERD/C/SR. 1133, para. 5), Russian legislation still lacked a specific definition of racial discrimination. Likewise, Mr. Wolfrum, the previous Country Rapporteur, had already noted that article 19, paragraph 2, of the Russian Constitution contained a provision whose scope was narrower than article 1 of the Convention, because it referred only to equality of rights. The same point had been made in paragraph 137 of the Committee's concluding observations (A/51/18), which had also found that the legislation necessary for the implementation of article 19 of the Constitution had not been adopted or effectively implemented.

16. Although Russian legislation did not strictly follow the wording of article 4 of the Convention, it contained a general framework which to some extent facilitated its application; nevertheless, as pointed out in paragraph 150 of the concluding observations, the Government had failed to take concrete and appropriate measures to outlaw and combat all organizations and political groups and their respective activities that promoted racist ideas or objectives. He asked whether cases other than that involving the Nazi terrorist "Werewolf Legion" could be cited in which charges had been brought for fomenting national hatred, how the courts had applied the legislation in force at the time and how Russian society had reacted to the sentences imposed.

17. Under the new Penal Code, which had entered into force on 1 January 1997, having motives of national, racial or religious hatred or enmity was an aggravating circumstance in cases of homicide, infliction of grievous bodily harm, torture, etc., but did not constitute a separate offence, as required by article 4 of the Convention. Moreover, notwithstanding the wide scope of article 282 of the new Penal Code, which sought to protect the constitutional order and State security, it seemed that certain offences referred to in paragraphs 1 and 2 of the article would not be punishable under the article unless they specifically involved efforts to

arouse national or racial hatred or hostility or to demean national worth or honour. He asked the delegation to comment on that interpretation and to expand on the concepts of constitutional order and State security.

18. Although considerable progress had been made in legislative reform, he recommended that the State party should review the extent to which its legislation was consistent with its obligations under the Convention. He commended the inclusion of article 347 on the crime of genocide in the new Penal Code and the legislative work undertaken to ensure equality and non-discrimination, as described in paragraph 24 of the report.

19. With reference to the right to nationality, it had been reported that many refugees both from other countries in the Commonwealth of Independent States and from further afield had restricted access to citizenship. Refugees or applicants for asylum residing in hostels and other accommodation centres were registered on a temporary basis and reportedly denied the opportunity to apply for citizenship. In particular, he inquired about the status of some 1,500 Azerbaijani refugees who had been resident in Moscow since 1990.

20. While progress in Russia's policy on nationalities was to be welcomed, the existing legal norms were still inadequate. He noted that the draft plan of action for implementation of the Outline of Russian State Policy on Nationalities covered such important provisions as the drafting of specific legislation, measures to stabilize the ethno-political situation in the country and in individual regions, action to deal with the aftermath of conflicts, notably in the Chechen Republic, and publicity for the action plan. He inquired about progress in implementing the draft plan of action.

21. He also asked for further information about the parliamentary hearings of the Committee on Nationalities, particularly those relating to the Ossete-Ingush and Chechen conflicts, and the results of its work on draft legislation to outlaw all forms of racial discrimination.

22. He welcomed the entry into force of the National Cultural Autonomy Act designed to ensure de facto equality of all ethnic communities and to offer them guarantees of cultural autonomy, and the establishment of an Advisory Council on National Cultural Autonomy to promote interaction between the State and the communities concerned. He asked for additional details regarding the Committee's functioning and achievements.

23. Stressing the need for more resolute action to protect ethnic minorities, he noted that such minorities, including the Roma, in the Caucasus and Central Asia had frequently been subjected to discrimination and human rights violations, even by those responsible for their protection. In the wake of acts of violence against Meskhet Turks in Central Asia in June 1988, 50,000 members of that community had been evacuated to other regions. Most of those currently living in Krasnodar Territory in southern Russia had allegedly been denied long-term residence permits and were not permitted to apply for citizenship.

24. When the Committee had considered the twelfth and thirteenth periodic reports, a member of the Russian delegation had referred to a special body responsible for implementing State socio-economic development and educational

programmes on behalf of the peoples of the Russian North. Local communities had also reportedly been created to preserve the culture of the Buryats in Siberia, the Tatars and Bashkiris in the Urals and the Evens, Evenks, Tofalars and Chukchi in the North. He asked for a progress report on those measures.

25. In its concluding observations on the twelfth and thirteenth periodic reports (A/51/18), the Committee had expressed concern at the increase in racist positions associated with nationalist movements and certain political parties. Noting that in February 1997 the State Duma had passed in second reading a federal bill banning the propagation of fascism, he inquired about the date of entry into force of the act and requested a copy of the text in order to assess its compatibility with the provisions of article 4 of the Convention.

26. Referring to special order No. 8 of 31 October 1995, according to which the norms laid down in an international treaty to which the Russian Federation was a party took precedence over national legislation, he asked whether that principle had been applied in specific cases before the courts.

27. He noted that the Government Prosecutor's Office was taking the Russian Federation's obligations under the Convention with the requisite seriousness and requested further information with a view to assessing the scope of its activities.

28. He commended the judicial reform measures described in paragraphs 43 to 47 of the report and asked for a copy of the relevant provisions of the Judicial System Act which had entered into force in December 1996. The training programmes for judges in matters relating to the exercise of citizens' rights and freedoms should include information on the obligations of the Russian Federation under the Convention. Similar training should be provided for law enforcement officers, given the frequent reports of blatant human rights violations by such personnel. Citizens of non-Slav origin or appearance were allegedly subjected to frequent identity checks in Moscow, sometimes even two or three times a day, and to the payment of fines, brief periods of detention and even ill-treatment by the police. There were substantial residence charges for even very brief stays in Moscow. He asked the delegation to comment on those allegations.

29. Referring to the Commissioner for Human Rights mentioned in paragraph 50 of the core document (HRI/CORE/1/Add.52/Rev.1) and to the appointment to that post of Mr. S. Kovalev, he requested further information regarding his functions and the action he had taken, particularly in cases involving racial discrimination.

30. References in the report to the sentencing of guilty parties in racial discrimination cases were appreciated by the Committee, but more information would be welcome on measures to counter racist propaganda such as the punishment and disbanding of organizations that engaged in the promotion of racial hatred or incitement to violence, in particular the National Republican Party. He also asked the delegation to comment on reports of anti-Semitic statements and publications.

31. With regard to the situation in the Chechen Republic described in Annex III to the report, he conceded that some aspects of the situation lay outside the Committee's scope, but submitted that all aspects were interconnected and had implications for the protection of human rights, particularly those covered by the Convention, inasmuch as obligations towards groups characterized by their ethnic or national origin had not been honoured. The Russian Federation was a State governed by the rule of law and democratic principles. Chechnya was no longer in a state of armed conflict. The current peace process must focus on normalization, chiefly through economic, social and political measures, with a view to creating a climate of mutual trust and security conducive to respect for human rights. According to Annex III, serious human rights violations were still being perpetrated. They were being committed on both sides. Some 140,000 people were reported to have emigrated, claiming they could no longer live in the Republic. Amnesty International reported indiscriminate killings of civilians, detention without trial, torture, ill-treatment and extrajudicial executions. It had received reports that armed Chechen opposition groups had been responsible for deliberate and arbitrary killings, torture, ill-treatment of prisoners and hostage-taking. The Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions was concerned about the impunity enjoyed by those responsible for the human rights and international humanitarian law violations committed in the context of the conflict (E/CN.4/1997/60/Add.1). In the light of those allegations, the Committee reiterated its request to the competent authorities of the Russian Federation and the Chechen Republic to take urgent steps to remedy the existing state of affairs.

32. Referring to the concern previously expressed by the Committee in its concluding observations, he requested further information on the conflict between Ingushetia and Ossetia.

33. The information provided on article 7 of the Convention was inadequate in view of the article's wide scope in the area of education, culture, information and promotion of understanding and tolerance between different social strata. While welcoming the tendency for ethnic schools providing instruction in the ethnic language to expand in areas with a sizeable non-native population and the adoption of language laws in republics such as Khakassia, Buryatia and Tatarstan that proclaimed the right of national minorities and small national groups to use their mother tongue (CERD/C/263/Add.9), he urged the State party to take further action in that regard, reporting on progress to the Committee.

34. Referring to paragraph 54 of the core document, he asked for more details on the reproduction of the texts of international instruments in official publications and the dissemination of the Convention in Russian and other widely spoken national languages. In that connection, he drew attention to paragraph 158 of the Committee's concluding observations (A/51/18) concerning dissemination of the periodic report and concluding observations and the need to publicize the procedure of individual communications under article 14. He also asked for more details about the establishment of human rights departments in a number of institutes referred to in the core document.

35. Mr. van BOVEN, commenting on the great diversity of the Russian Federation in terms of nationalities, ethnic groups and minorities, said that the changeover from a tendency in the past to think solely in terms of political blocs involved a major and highly stimulating learning process. The Convention was of crucial importance to so diverse a country as a means of combating prejudice and discrimination and also for confidence-building. He welcomed the Russian authorities' obvious determination to report regularly to the Committee. However, he was not entirely satisfied with the structure of the report, drawing attention to the Committee's recommendation in the previous concluding observations that the next periodic report should be a comprehensive one and that all concerns expressed in the observations should be addressed. Moreover, the report was not in conformity with the article-by-article approach recommended in the reporting guidelines. He had been unable to determine the extent to which the new Penal Code met the requirements of article 4 of the Convention. There was very little information about article 6 concerning redress for victims and reparations for damages and article 7 concerning teaching, culture and information.

36. The report claimed that account had been taken of the concluding observations but in fact a selective approach had been adopted. He was unable to see any follow-up to the recommendation in paragraph 149 of the concluding observations regarding measures to ensure the development and protection of less developed groups within the Federation. The same applied to paragraph 150, which strongly recommended that action should be taken to outlaw and combat organizations and political groups that promoted racist ideas or objectives, and to paragraph 151 concerning the abolition of the permit system. The report had not provided the type of information requested in paragraph 156 on complaints and court cases related to racial discrimination and the decisions and judgements handed down. The Committee had also recommended that the State party should ratify the amendments to article 8, paragraph 6, of the Convention.

37. He was grateful for the information in Annex III and the oral presentation regarding the situation in the Chechen Republic, but was concerned about the patterns of impunity referred to by the Special Rapporteur on extrajudicial, summary or arbitrary executions. As the delegation had correctly noted, a long process of healing and reconciliation was necessary but Annex III seemed to divide the parties involved into the "good" Russians and the "bad" Chechens. In so doing, it failed to reflect the spirit of article 7 of the Convention. In connection with the situation in the Chechen Republic, he drew attention to the Committee's General Recommendation XXI on the right to self-determination, which clearly expressed the view that international law had not recognized a general right of peoples unilaterally to declare secession from a State, and wished to make it clear that when the Committee raised issues of an ethnic nature, it was against the background of that view.

38. Mr. Yutzis took the Chair.

39. Mrs. SADIO ALI said it was important to recognize the difficulties the Russian Federation was facing as a multi-ethnic and multicultural society. It had made strides in the political sphere, but in terms of economic growth, a good deal of work lay ahead. Russian reforms had affected children most and

they were increasingly at risk, as could be seen from the reports of widespread homelessness, domestic violence, suicide, ill-health, placement of children, including those with living parents, in orphanages, juvenile crime and child abuse. The root problem was the post-Soviet breakdown of families under the impact of poverty and shifting social mores. President Yeltsin had recently acknowledged that market reforms had hit children particularly hard and had promised to take action. She requested details of the programmes initiated.

40. Information was also needed on the "fifth line" in internal passports identifying a citizen's origin. Several Russian ethnic republics had demanded its reinstatement, while the Jewish community had hailed its abolition. According to article 26 of the Constitution, every citizen had the right to determine his State nationality. The issue seemed to be complicated: the Tatarstan Constitution, for example, envisaged both Tatar and Russian citizenship for its population.

41. She asked for clarification of the claim that minority languages were under the protection of the State as national property. It was reported that State schools offering instruction in the indigenous mother tongue were rare and that parents had been prompted to send their children to schools where only Russian was spoken. That was regrettable, considering the importance minorities attached to their languages.

42. What impact had oil development had on the traditional way of life of the Eastern Khants, who were subsistence hunters and fishermen? Oil extraction was now reportedly threatening their culture. Was there any Government strategy for the conservation of the land and culture of the Yugan Khanty biosphere reserve? Legislation on the legal status of the indigenous peoples of the North had been proposed in the Duma but rejected by Parliament, as well as by the President. Had those peoples received any form of compensation for the lands that had been taken away? It was reported that the social and demographic situation of the indigenous peoples of the North and of the Russian Far East continued to deteriorate; one of five unemployed in Russia was resident in the North, and half of all unpaid salaries was owed to northerners. According to paragraph 59 of the report, small ethnic groups were to receive special attention. What was the nature of that attention?

43. She also wished to know about the relationship between the Russian Federation and its constituent ethnically based republics. In what respect did the 1993 Constitution of the Republic of Tuva differ from that of the Federation? Were the Russian inhabitants of Tuva, who accounted for 32 per cent of the population, among those who had opted for the new Constitution? What was the language policy? Did they have greater economic and political independence? More information should also be provided about the case of the Republic of Tatarstan, which had refused to disband itself and had signed a treaty with President Yeltsin ceding extensive powers to the Republic and allowing it to retain its own Constitution.

44. Why had so many of the ethnic republics suspended Presidential Decree No. 1.400 on their territories and voted against acceptance of the Russian Constitution? Most of them had adopted their own Constitutions claiming supremacy over federal law. Was it true that Chechnya had taken steps to

underscore its separate identity by replacing the Russian legal code with Islamic Sharia law? Russia's new Religion Bill seemed to violate the Constitution, as it asked all religious bodies to register with the authorities by 1999. Why had the State Party delayed in ratifying International Labour Organization Convention No. 169?

45. Mr. DIACONU said the Russian Federation was unique on account of its multicultural and multi-ethnic nature as well as its size and social organization. It was a country in transition, with institutions and legislation proper to a democratic system and a stabilized market economy, but there were some remaining influences and mentalities of a centralized system and it faced both legislative and administrative problems of coordination. That was why more factual information was needed on the situation of people of different nationalities in the State party and on their access to public life, economic and social benefits, culture and education. The State party was one of the few to have actually taken measures in response to the Committee's recommendations, examples being the National Cultural Autonomy Act and measures to strengthen the independence of the judiciary. There was also a policy for dealing with problems between different nationalities, as well as special development programmes for ethnic groups, as outlined in paragraphs 48 to 52 of the report. In some regions, however, such programmes were coming too late, and were aimed at stabilizing the situation in the aftermath of conflicts, such as in North Ossetia/Alania and Ingushetia. Experience in Chechnya demonstrated that such measures should be implemented before the conflicts, in order to prevent them, and not afterwards, to repair the damage.

46. Both the report and national legislation used different terms, such as "nationalities", "minorities" and "ethnic groups". What were the criteria for distinguishing between them? Did they involve numbers, legal systems, the status of subject of the Federation, or autonomy? How were those groups recognized or formed, especially with regard to the individual right of each person to determine and state his or her national identity, under article 26 of the Constitution?

47. He was puzzled by some of the statistics in Annex I of the report, which sometimes listed a single nationality under several headings. For example, it listed Tatars, Crimean Tatars and Crimeans. If Crimeans were not Tatars and not Ukrainians, then what were they? Jews were mentioned once generally, and then again as Central Asian Jews and as Mountain Jews. What was the difference in language, religion, culture and ethnic background between Karelians, Saami, Eskimos and peoples of the North? Why were they sometimes counted by region and not on the basis of their ethnic characteristics? The special law to be adopted in anticipation of the November 1999 census should perhaps take account of new data and the individual will of the population.

48. According to the annex, there were about 153,000 Gypsies in the Federation. That was not a large minority, but throughout Europe the Gypsies were confronted with many difficulties, and more information would be appreciated. Legislation allowed State authorities to take measures against

individuals inciting racism. Did such cases occur, and if so, how were they resolved? What measures were taken when orders were issued to limit citizens' rights on ethnic grounds, as mentioned in paragraph 40? The next report should contain more specific information on manifestations by members of extremist organizations (paragraph 42), which were supposed to be prohibited under the Convention.

49. Mr. de GOUTTES said that the regular submission of periodic reports showed a commendable will for dialogue; many States parties did not submit their reports as promptly. The fourteenth report was an updating one, which perhaps explained its brevity. He welcomed the State party's declaration under article 14 of the Convention, which had so far been made by only 25 States parties. The Russian Federation was also encouraged to accept individual communications under the European Convention on Human Rights, as the two procedures were complementary. What were the prospects of that document being ratified?

50. Paragraphs 17 et seq. of the report provided only limited information on the application of the new Penal Code. Statistics, specific information and practical examples were needed regarding complaints, prosecutions, cases, decisions and reparations in order to assess the extent to which the victims of racism were protected. The Committee had previously expressed concern over the increase in racist positions associated with nationalist movements, racist attitudes towards Caucasians, especially Chechens, and expressions of anti-Semitism.

51. In becoming a member of the Council of Europe, Russia had decided to suspend all executions, with the intention of abolishing capital punishment within three years. However, according to Amnesty International and other sources, executions were still being carried out. Was that true?

52. The Government Prosecutor's Office was supposed to check on compliance with laws banning discrimination. According to paragraph 40, checks had been made on the registration of political parties and public organizations and the consistency of their activities with their objectives. Could other examples be provided of investigations and measures taken against parties or organizations that manifested racist tendencies?

53. The Committee had welcomed the establishment of a special commission on human rights in 1993. Since then, however, Amnesty International had reported that the head of the commission, along with several members, had resigned. What was the status of both the commission and its head? What had been done in response to the Committee's recommendations that judges, lawyers and magistrates should be trained in human rights and in interracial and interethnic understanding and that such training should also be provided to law enforcement personnel and the military?

54. Mr. Aboul-Nasr resumed the Chair.

55. Mr. GARVALOV said he was impressed by the frank admission in the report about the situation in Chechnya. He also welcomed the detailed statistics on the ethnic and linguistic composition of the population; no other State party had done as much. The new legislation enacted since 1996 was also impressive;

the text of national minorities legislation should be made available to Committee members. The Committee dealt cautiously with the problem of minorities, and its approach to that problem varied with each State party.

56. The report failed to follow the Committee's reporting guidelines, as had the previous two reports. Insufficient information had been given on specific cases of litigation concerning racial discrimination. In such cases, what sentences had been handed down and how had they been followed up?

57. If the Chechens wished to secede, he wondered how they would be convinced not to do so. The Russian Federation was on record as not allowing unilateral secession. The Committee, too, in its General Recommendation XXI, did not condone unilateral secession of ethnic or minority groups from a metropolitan State party. What would be the outcome? According to statistics from the 1989 census, 99 per cent of Chechens had said their mother tongue was that spoken in their region, unlike some other Russian ethnic groups, such as the Bulgarians, half of whom claimed their ethnic language as their mother tongue while the other half claimed Russian. He wondered whether that could be due to the fact that unlike Bulgarians, Chechens were largely concentrated in one particular territory. If that were the case, he would welcome information on measures to integrate dispersed peoples, such as the Bulgarians and Ukrainians. How, with regard to the Chechens, could the Federation fulfil its obligations under article 7 of the Convention to promote understanding and harmonization among racial or ethnic groups? More information should also be provided on implementation of article 7 of the Convention.

58. Mr. LECHUGA HEVIA said that he would like updated information on a number of points. He wondered whether he was right in thinking that although article 29, paragraph 2 of the Constitution prohibited discrimination of any kind in Russian society, it did not prohibit the existence of racist organizations as such or recognize participation in such organizations as an offence punishable by law as stipulated in article 4 of the Convention.

59. Paragraph 24 of the report referred to the State Duma Committee on Nationalities and its work on a host of federal laws. However, it failed to mention what the outcome of the Committee's work had been, when its work would come to fruition, if it had not already, or what the legislative measures would mean in practice. The same was true regarding the information given in paragraph 27.

60. The Committee would be pleased to know of any developments since the second reading of a federal bill banning the propagation of fascism in the Russian Federation, as mentioned in paragraph 35, the extent of the problem of fascist tendencies in the country and how they were being countered. Information should also be provided on the State bodies to combat fascism referred to in paragraph 41 of the report.

61. More precise details were needed on the reference in paragraph 52 of the report to the programme to deal with the aftermath of the Ingush-Ossete conflict and how those peoples were being rehabilitated psychologically.

62. What were the criminal and psychological pressures being brought to bear on Russian and Russian-speaking inhabitants of Chechnya and what was meant by the policy of "ethnic cleansing", referred to in paragraph 6 of annex III? Similarly, were authorities of the Chechen Republic or the Russian Federation responsible for preventing and dealing with the mass violations of human rights that were taking place in the Chechen Republic?

63. Mr. SHERIFIS applauded the size of the delegation of the Russian Federation and the regularity with which reports were submitted. The fourteenth periodic report, which should be seen as an updating report, had been complemented by the oral introduction, a copy of which might usefully be circulated to members of the Committee. The Russian Federation should be commended for having made the declaration under article 14 of the Convention. However, the Committee would be interested to know how and if the Government had taken measures to inform the public of the right of individual petition. Information would also be welcome as to whether the Russian Federation had initiated proceedings with regard to the amendments to article 8, paragraph 6 of the Convention on the financing of the Committee.

64. In respect of articles 5 (d) (i) and 5 (e) (i), he asked how far freedom of movement and residence was respected within the borders of the Russian Federation, how the unemployment situation stood and whether it was possible to provide a breakdown of figures on unemployment along ethnic lines.

65. Further information was needed on the situation of "ethnic cleansing", as referred to in paragraph 6 of Annex III. Was it true that "ethnic cleansing" amounted basically to harassment and intimidation or were more direct forms of violence involved? Paragraph 15 of the annex stated that 453,000 citizens of the Chechen Republic had left their homes between December 1994 and August 1996 and that roughly 270,000 civilian victims had been provided with temporary accommodation between August and September 1996. What had happened to the others? He drew the delegation's attention to the views expressed in the Committee's General Recommendation XXI (48) regarding the fragmentation of States.

66. Mr. SHAHI welcomed the multi-ethnic and multinational composition of the delegation of the Russian Federation and what that implied in terms of cooperation and dialogue with the Committee.

67. In November 1997, a Seminar on the Role of the Internet with regard to the Provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, organized by the High Commissioner for Human Rights, had recommended that the Committee should make reference to the Internet and its implications for spreading racist and extremist propaganda when considering the reports of States Parties.

68. The Seminar had recognized the technological difficulties involved in controlling information circulated on the Internet but had considered that the Convention applied as much to electronic media as to more traditional means of communication. He asked whether there were Websites in the Russian Federation devoted to extremist propaganda, how legislation there could be used to prevent that and if, in the absence of legislation, measures were envisaged to deal with the problem.

69. The CHAIRMAN asked whether the Internet could be controlled from within one particular country.

70. Mr. SHAHI said that leading service providers at the Seminar had recognized the difficulties involved in controlling information received from or circulated on the Internet. However, several countries had enacted legislation to prohibit racist propaganda on the Internet, providing for penal sanctions for nationals who were found to have circulated racist propaganda on the Internet, even when the Website was registered in another country, a ruse that was often used to disguise the source of the propaganda.

71. Mr. YUTZIS said that clarification was needed of the distinction between racist acts and efforts to incite racial hatred "committed in public or through the mass media" referred to in paragraph 19 of the report. The delegation should also give an idea of progress in the legislation mentioned in paragraphs 24 and 27 of the report and the schedule for implementation. He asked whether minority groups would be involved in implementing the legislation when it had been finalized.

72. He also asked what percentage of gross domestic product would be allocated to the range of measures referred to in section IV of the report, what sums would be involved and how resources would be allocated.

73. Information would be welcome on a problem that presumably continued to exist for the Russian Federation, inherited from the former Soviet Union, i.e. the requirement that people of Jewish origin who had emigrated to Israel had had to surrender their passports before they left. The absence of official documents meant that a return to the Soviet Union and, subsequently, the Russian Federation, had been and continued to be fraught with difficulties.

The meeting rose at 6.05 p.m.



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of all Forms of
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Fifty-second session

SUMMARY RECORD OF THE 1247th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 3 March 1998, at 10 a.m.

Chairman: Mr. ABOUL-NASR

later: Mr. DIACONU

later: Mr. ABOUL-NASR

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GE.98-15427 (E)

The meeting was called to order at 10.10 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

1. The CHAIRMAN announced that Mr. Ferrero Costa and Ms. Zou, members of the Committee, had informed the secretariat that they were unable to participate for the moment in the Committee's work. The secretariat had also been informed that Mr. Wolfrum, a re-elected member of the Committee, probably would not attend the current session. On the other hand, he had not received any word from Ms. McDougall, a newly elected member of the Committee. Finally, he had received voluminous correspondence from non-governmental organizations and the press and would see that it was distributed to Committee members.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Fourteenth periodic report of the Russian Federation (CERD/C/299/Add.15; HRI/CORE/1/Add.52/Rev.1) (continued)

2. At the invitation of the Chairman, the delegation of the Russian Federation took places at the Committee table.

3. The CHAIRMAN invited the delegation of the Russian Federation to reply to the questions put by Committee members at the previous meeting.

4. Mr. ABDULATIPOV (Russian Federation) said he was gratified by the regular dialogue established between the Committee and the Russian Federation, which had proven to be extremely useful to his delegation. It had categorized the 40 or so questions put to it by the members of the Committee, and the competent members of the delegation would reply to them.

5. Mr. ZORIN (Russian Federation), speaking as President of the Committee on Nationalities of the State Duma, said that the activities of Parliament had undergone major changes due in large part to previous questions and comments by members of the Committee on the laws concerning nationalities and autonomy.

6. In reply to the questions asked by Mr. Valencia Rodriguez and Mr. van Boven, particularly on the status of the laws mentioned in paragraph 24 of the periodic report (CERD/C/299/Add.15), he explained that the National Cultural Autonomy Act had entered into force a year and a half earlier; the act on the foundation for the legal status of Russia's small indigenous peoples had been adopted by the Duma but had not yet been signed and a new bill would be considered in 1998. The Peoples of Russia (Languages) Act had been approved by a majority of the Duma and was to be referred to the Federal Assembly, where the applicable procedure would be followed. The Refugees and Displaced Persons (Assistance Fund) Act and the Indigenous Peoples of the Far East Act were under consideration and consultations were being conducted with the various bodies of the Federation and other organs involved. Finally, the Regions of Traditional Land Use Act was being studied by the Federal Assembly.

7. The authorities of the Russian Federation planned to amend and modify federal legislation in order to establish an independent budget line for all credits earmarked for financing relations among nationalities and the Federation; in that way the implementation of those projects could be better monitored. Likewise, a bill ratifying the framework Convention on the Protection of National Minorities would be examined by the Committee on International Affairs, which intended to recommend its ratification to the Duma.

8. Concerning the prohibition of incitement to racial hatred, steps were being taken to amend the relevant laws in force, and the Penal Code in particular.

9. In reply to Ms. Sadiq Ali's question on the protection of the languages of national minorities, he recalled that the Peoples of Russia (Languages) Act contained important provisions intended to protect and promote the rights of national minorities. Moreover, the Education Act of 1992 granted to citizens the right to primary education in their national language subject to the resources available to the educational system. Lastly, the Act of 12 October 1992 guaranteed the right of peoples and other minorities to the protection and development of their culture and their historical habitat. Cultural autonomy was guaranteed to all stateless minorities and the National Minorities Act provided for the promulgation of necessary legislation to promote minority educational and cultural establishments.

10. In reply to Mr. Diaconu's question concerning the method used to draw up the list of nationalities, he said that the law allowed individuals to declare their nationality themselves during the census. The Tatars and the Crimean Tatars were different peoples, particularly in culture and language, but they were both of the Muslim religion. There were many other stateless nationalities, such as the Bulgarian minority. However, the Government was not conducting an ethnic minority assimilation policy. The National Minorities Act guaranteed the cultural development of citizens who did not find it useful to unite in order to protect their culture. Moreover, many persons belonging to ethnic minorities were dispersed throughout the country, which made it difficult to provide them with special education. Nevertheless, they could learn their national language in special classes and Sunday schools, which were increasing in number.

11. With regard to the questions put by Mr. van Boven and Mr. Lechuga Hevia on combating Fascism, he explained that the Duma was putting the finishing touches to a bill intended to combat that scourge and that the President had issued a decree to that effect.

12. Mr. KEHLEROV (Russian Federation), speaking in his capacity as the Deputy Procurator General of the Russian Federation, said that the Office of the Procurator occupied a key position in the judicial system. In addition to its own functions, it defended citizens against abuse of power by officials. In 1997, it had obtained redress for individuals in 70,000 cases where officials had failed to do their duty, and in particular 30,000 cases involving the rights and freedoms of citizens. On that occasion, it had initiated proceedings against 60,000 culpable officials. The Office of the

Procurator was at present the only body which defended the interests of Russian citizens free of charge. Any individual could apply to it and it was under an obligation to initiate proceedings.

13. In reply to a question by Mr. Valencia Rodriguez, he said that article 282 of the Penal Code, which protected the rights of the individual, had been incorporated into the provisions on violations of State security because article 2 of the Constitution stated that man and his rights and freedoms were the supreme value that should be protected by the State. Any violation of the rights of citizens was thus considered as a breach of the constitutional regime of the State. Likewise, crimes motivated by racial or ethnic hatred were of course penalized, in accordance with article 4 of the Convention, but such motives were considered as aggravating circumstances. For example, article 305 of the Penal Code, which established a maximum sentence of 15 years' imprisonment for crimes under ordinary law, stated that the punishment could be increased to 20 years' imprisonment, life imprisonment or even capital punishment if the crime included an element of national, religious or ethnic hatred.

14. With regard to the questions put by Mr. Valencia Rodriguez, Mr. de Gouttes and Mr. van Boven concerning the implementation of legislative provisions guaranteeing the protection of citizens, he cited several cases in which article 282 had led to prison sentences for persons responsible for anti-Semitic publications. Similarly, article 294 of the Penal Code had allowed the prosecution of other authors of anti-Semitic articles. While the number of cases of incitement to racial hatred was not particularly high, the State was conducting a rigorous and determined policy to combat them and was gradually establishing a legal basis on which to ensure full respect for the Convention.

15. The CHAIRMAN welcomed the many measures taken to punish acts of discrimination against Jews. As the only representative of the African continent on the Committee, he personally would like to know what the Government was doing to combat the discrimination and harassment to which Africans in the Russian Federation were subject, particularly students at Patrice Lumumba University. Had measures similar to those for the protection of Jews been taken to protect African students and persons of colour in general?

16. Mr. KEHLEROV (Russian Federation) said that any complaint by an individual reporting discrimination on racial or religious grounds was duly examined by the authorities, who took the appropriate measures in accordance with the law. That was a position of principle which was strictly observed.

17. Mr. SHAHRAY (Russian Federation), speaking in his capacity as the representative of the President of the Russian Federation to the Constitutional Court, replying to Ms. Sadiq Ali's question concerning the indication of nationality on new passports, recalled that article 26 of the Constitution granted to each individual the right to determine his nationality and national identity. The question which arose in practice was where and at what time could the citizen exercise that right. He could do so from the

age of 14, when his first passport was issued. In that regard, the census which would take place in 1999 would allow each citizen to determine his nationality in accordance with the legislation in force.

18. In reply to the question concerning possible violations of the moratorium on capital punishment, he explained that, following the message of the President of the Russian Federation, not a single death sentence had been reported. Moreover, since the promulgation of the Presidential Decree on the subject, and in addition to any application for pardon, no executions had taken place. The State Duma had resumed consideration of the moratorium bill and it was not impossible that the legislature would eliminate that penalty from the Penal Code, especially since the Russian Federation had signed Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty - an international instrument which took precedence over national legislation. With regard to the fear that Shariah would be imposed in the Chechen Republic, he said that fortunately it had not been applied in recent times.

19. It appeared that some members regarded the practice of registering individuals, and refugees in particular, as a violation of the Convention; the Constitutional Court shared that view, since it had confirmed that any restriction of the right to establish residence or of freedom of movement was in violation of article 27 of the Constitution. To take just one example, the Ministry of the Interior had denied a Georgian detained in the Russian Federation authorization to return to Georgia and had been obliged to go back on its decision and grant the person concerned the passport he required. In January 1998, the Constitutional Court had identified three provisions in the legislation on the registration of citizens of the Russian Federation and other persons residing voluntarily in the country as being not in conformity with the Constitution. The relevant laws were being amended and henceforward a citizen would himself determine his place of residence; that would automatically settle the question of registration.

20. The Russian Federation's Ombudsman Act had been promulgated and applications for the post were being awaited; it should be filled within the year. The Commission on Human Rights comprised well-known specialists and was functioning satisfactorily. It submitted an annual report to the President, who had decided that 1998 would be a year for the protection of human rights.

21. One expert had expressed surprise that the Rostov court should have found the Cossack Union to be illegal without immediately prohibiting that organization. He explained that if the statutes of an organization was not at variance with the Constitution - if in general they observed the letter of constitutional law - the Minister of Justice could not refuse to register it. He had done so in the case of the frankly fascist organization "Russian Unity", but to forbid the Cossack Union would have required a judicial decision that could be taken only if that organization disregarded the warnings it had received.

22. With regard to questions on languages, he informed the Committee of a case at present before the Constitutional Court which involved two republics, namely, the Mari Republic and the Bashkir Republic, whose Constitution required any candidate for the presidency to know its language. That was a

delicate matter, but there was no doubt that the Constitutional Court would be able to protect the equality of citizens regardless of membership of a national group while taking into account the fact that the two republics were part of the Russian Federation and had the right to their own language in addition to Russian.

23. One very important question had concerned the means by which the Constitution, and hence the Convention, could be invoked, before the courts. That could be done in four ways. First, the Constitutional Court could give a ruling since its decisions were irrevocable and took precedence over those of other bodies; it had thus reviewed 36 decisions taken by various republics. Second, the President could oppose the decisions of regional authorities if they violated the Constitution, as had already happened 12 times. Third, the Constitutions of the various republics were slowly but surely coming into line with that of the Russian Federation. Fourth, cooperation mechanisms among central and regional bodies had been established on the basis of agreements, which could be concluded only with Federation entities whose Constitutions were in conformity with that of the Federation.

24. What he been decided was part of a long-term process that would not produce results immediately but was well under way.

25. Mr. Diaconu took the Chair.

26. Mr. TSAGALOV (Russian Federation), after welcoming the interest and understanding shown by the Committee, said that, as the Deputy Minister on Nationalities, he would reply to the question on the application of article 6 of the Convention concerning reparation for damage suffered as a result of discrimination. The compensation process was proceeding in a satisfactory manner. The steps taken on behalf of the victims of discrimination were of a political, social and financial nature. Specifically, for example, the Karachai-Cherkas Republic had greatly benefited from the Russian Federation's 1997 budgetary appropriation of 96.9 billion roubles for the implementation of the Territorial Rehabilitation of Repressed Peoples Act; the victims of political repression had received some 3.4 billion roubles and victims of forced displacement 9.2 billion. That compensation served as reparation not only for wrongs caused in the political sphere or by the illegal confiscation of property, for example, but also as assistance in the areas of employment, education and health care.

27. With regard to the results of the new legislation on relations between nationalities, he explained that a Federal National Cultural Autonomy Act guaranteed the right to the cultural autonomy of citizens wherever they lived as well as the rights of national minorities. An advisory council on the autonomy of national minorities under Mr. Abdulatipov, Head of the Delegation, consisting of representatives of the most diverse nationalities and minorities, monitored the application of the many measures taken to promote cultural autonomy, and in particular the publication of books or newspapers in national languages. In Moscow alone, 146 different nationalities lived side by side, and he could not point to a single example of conflict among them, even when disputes occurred in their places of origin. Any activities undertaken in the area of cultural autonomy would certainly promote the development of the communities concerned.

28. As for the question whether there was a nationalities policy at the federal level, he noted that a federal programme was being developed that would include numerous subprogrammes aimed at various groups - Turkmen, the peoples of the North or others. The Ministry of Nationalities, for its part, was implementing a number of programmes. For example, it had drawn up a schedule of Gypsy cultural events and had earmarked 150 million roubles for the development of Gypsy culture. It was also promoting the development of numerically small peoples, whose schools and places of worship had been reopened. All those initiatives had begun to produce good results. The numerically small peoples of the North and Far East in particular would be provided with State support under a presidential programme which was to be implemented by the year 2000 by the competent federal committee in the framework of the International Decade of the World's Indigenous Peoples. There were plans to assist those who left the north in finding housing and employment.

29. A programme was being implemented to resolve the conflict in the Republic of North Ossetia/Alania between Ossetes and Ingush. The presidents elected respectively by the Ingush and the Ossetes had met very recently and the conflict between those two people should be resolved in the near future.

30. An amount of 6 billion roubles was to be earmarked for the nationalities programme in 1998 in the form of an independent budget line. Furthermore, 12 million roubles were available in the Fund for the Renaissance of the Peoples of Russia. In addition, some programmes were directed specifically at the peoples of the North and the Chukchis, as well as peoples deported because of their nationality.

31. The problem faced by the Meshket Turks and the Gypsies were of long standing. The former had been forced to leave Georgia, the country where they had their roots, and were at present in transit in Russia. It was paradoxical that the High Commissioner for Refugees had stressed the responsibility of Russia whereas it was Georgia that would not allow the Meshket Turks to return to their lands. As for the Gypsies, with whom he had long been acquainted, he assured the Committee that their situation was satisfactory.

32. Mr. TARASOV (Russian Federation), speaking in his capacity as Deputy Director of the Law Department of the office of the President, said that citizens themselves voluntarily indicated their mother tongue and the national group to which they belonged during the census. The concept of a people was used in the Constitution to determine the common characteristics of a group. If that group was resident in the Russian Federation, it became a people of the Russian Federation. The term national minority meant a group of persons essentially residing outside the Russian Federation.

33. The Constitutional Court, the President of the Federation and senior officials were making every effort to introduce reforms in cases where there was a conflict between the Constitution and the Convention and the Ministry of Justice was conducting a study to identify such cases. Judges, lawyers, officials of the Ministry of the Interior and all persons responsible for ensuring respect for the rights of citizens studied the various international instruments relating to their special fields during their training.

34. Mr. KEHLEROV (Russian Federation), stressed that the events which had occurred in Chechnya were a real tragedy for Russian and that it would take a great deal of time and wisdom to get over them. It was undeniable that both sides had committed war crimes in the Chechen Republic. Numerous cases of homicide, looting and assault had been brought before the courts and 23 persons had been convicted.

35. However, there was no discrimination against Chechens and many Chechens were working in various ministries and other public agencies.

36. Mr. RAMISHVILI (Russian Federation) speaking in his capacity as the head of the Department of Human Rights of the Russian Federation Ministry of Foreign Affairs, said that, in accordance with article 15 of the Constitution, the international treaties to which the Russian Federation was a party had the force of law and were a part of the national legal system. The principle of the primacy of international law was recognized and the Constitutional Court took due account of various international treaties. He regretted, however, that he was unable to inform the Committee of any case in which the Convention might have been invoked before a court.

37. There was nothing to prevent refugees who were not Russian citizens, such as Armenians and Azerbaijanis, from requesting Russian nationality. He stressed that the legislation was liberal and even provided for dual nationality. It was in the State's interest that those refugees obtained Russian nationality, since it would then no longer have to pay them allowances in respect of their status.

38. The Russian Federation had no objection to ratifying the amendment to article 8 of the Convention, but had thus far been unable to do so because of its financial situation and red tape. The Government would propose its ratification to the Legislature within a few months.

39. The Government had initiated the ratification procedure for ILO Convention No. 169 concerning indigenous and tribal peoples in independent countries.

40. The Russian Federation recognized the Committee's competence to receive communications from individuals; Russian citizens were fairly well informed about international procedures in that respect. There were many human rights organizations in the Russian Federation and in any event, the authorities were under a duty to consider complaints or, if necessary, to transmit them to the competent bodies. In addition, all relevant information was published in the Official Gazette.

41. Jews who had been deprived of Russian nationality and emigrated to Israel could return to the Russian Federation and again obtain Russian citizenship.

42. The new Freedom of Conscience Act was in conformity with the spirit and the letter of the Convention and its application in the various regions of the Federation was monitored by a State commission on religious questions and the restitution of property confiscated from certain religious communities.

43. Mr. ABDULATIPOV (Russian Federation) said, in conclusion, that the detailed replies which the delegation had provided to the experts demonstrated the Government's keen interest in the work of the Committee and in the Convention. As the Deputy Prime Minister of the Russian Federation, he assured the Committee that the Government was making every effort to reflect the provisions of the Convention in national legislation and put them into practice. The comments of Mr. Valencia Rodriguez and other members of the Committee would provide the State with guidance in its implementation of the Convention. He stressed that the Government was intent on cooperating with the Committee, and was pleased that the experts had appreciated the size of the delegation and the fact that it represented the various nationalities and administrations of the Russian Federation. Finally, he thanked Mr. Rechetov for his assistance in drafting the delegation's reports.

44. The CHAIRMAN thanked the Russian delegation for its detailed replies to the Committee's questions.

45. Mr. ABOUL-NASR also thanked the delegation for its extensive replies to the Committee's questions, but said he was not satisfied by the statement that there was no discrimination in the Russian Federation. The Committee had always rejected that sort of statement because it believed that cases of discrimination occurred throughout the world. Such problems should be resolved and their existence not denied. He was personally aware of the case of an African student, who, because he was seeing a Russian girl student had been ill-treated and roughed up. It was to be hoped that, in the next report, the Government would describe all the types of discrimination which occurred in the Russian Federation and indicate what action had been taken. Finally, it would also be helpful for the Committee to be informed about the status of certain minorities.

46. Mr. YUTZIS said that he had found many of the delegation's replies useful. Since he was unaware of the extent of the financial resources allocated to the programme of assistance to minorities, he asked the Government to indicate in its next report the equivalent in United States dollars and as a proportion of the gross domestic product. He would also like to know what timetable had been drawn up for the implementation of the various programmes aimed at improving the application of the Convention.

47. In his view, Russian citizenship should be restored to those citizens who had been deprived of it without requiring them to request it; he would appreciate clarification of that matter. Lastly, referring to annex 3, paragraph 6 of the periodic report, which stated that the Russian and Russian-speaking inhabitants of Chechnya had been subjected to intensified psychological pressure, were the victims of an increasing number of crimes, and that a policy of "ethnic cleansing" was in effect, he stressed that the term ethnic cleansing should be used with great care. In his view, it could not be stated that the acts of the Chechens referred to in that paragraph constituted ethnic cleansing against Russian citizens or Russian speakers.

48. Mr. van BOVEN said that, despite the explanations provided by the Russian delegation, he remained uncomfortable with the tone and terminology used in annex 3 of the periodic report to describe the Chechen conflict. When the Deputy Procurator General of the Russian Federation, Mr. Kehlerov, had

stated that there had been 23 convictions for crimes committed during the conflict, he had the feeling that he was referring more to offences under ordinary law than to crimes against humanitarian law. Perhaps that was explained by problems of interpretation, but he would appreciate clarification of the matter.

49. Acknowledgement of the fact that abuses, including those of a criminal nature, had been committed seemed to be a prerequisite for any reconciliation process. However, such a process would admittedly take time and was above all an internal matter.

50. To end on an optimistic note, he had that morning received a detailed report on the situation of human rights in the Russian Federation issued by a non-governmental organization in Moscow. The fact that such reports, which in the past had come from abroad, had reached him directly from the Russian Federation was a positive development that should be highlighted.

51. He hoped that, in its next report, the Russian Federation would take due account of the Committee's guidelines and the comments made during the current session.

52. The CHAIRMAN, speaking as a member of the Committee, noted that ethnic cleansing was not always practised by the dominant majority; it could also be practised by minorities. The Committee should take that fact into account and vigorously condemn such activities, regardless who was responsible for them. He pointed out that his observation was of a preliminary nature and not connected with the situation in the Russian Federation.

53. Mr. ABDULATIPOV (Russian Federation) said that his delegation did not claim to have replied to all the questions put; it had come to engage in a frank dialogue with the Committee in an attempt to take stock of the situation and to seek, with the help of members, solutions to the problems it faced.

54. He acknowledged that cases of racial discrimination persisted in day-to-day life in the Russian Federation, even if they were condemned by the State. However, the rights of Russians, as well as those of Chechens or other minorities, might well be violated. Contrary to what some had stated, the Chechen minority was not systematically denigrated by Russians, and many persons had come to their defence, which was undoubtedly the first time that that had happened in a conflict of that type.

55. He was quite surprised to learn that the term ethnic cleansing had been used in the French and English versions of the periodic report, since the Russian Federation had never used it in its reports. Incidentally, that term would be unacceptable from the standpoint of Russian legislation and the Constitution.

56. The implementation of the International Convention on the Elimination of All Forms of Racial Discrimination would be a lengthy process, but the Russian Federation would devote every effort to that task, taking its inspiration from the Committee's comments and guidelines.

57. Mr. VALENCIA RODRIGUEZ (Country Rapporteur), summarizing the main points of the discussion, said that the Committee had noted with satisfaction that the Russian Constitution already contained important provisions on the principle of equality before the law. The rest of its legislation must be brought into line with the Constitution, however, and in particular the new Penal Code should be revised in the light of article 4 of the Convention so as to prohibit organizations or associations which incited racial discrimination and hatred. Its legislation should also be amended to give effect to article 5 of the Convention and to prohibit any discrimination on the basis of race or national or ethnic origin, in particular with regard to the exercise of such fundamental rights as freedom of movement within the national territory and the right to a nationality. Concerning article 6, more detailed and explicit information should be provided on the legal remedies available in cases of discrimination. Likewise, more complete information concerning article 7, which was important in many respects, would be appreciated. The measures taken to increase the independence of the judiciary were welcome and the action of the Procurator General was commendable; those efforts should be continued and the Committee kept informed about progress made in that area. Important, but as yet inadequate, measures had been taken concerning nationality. In view of the country's ethnic diversity, national languages must be promoted and protected. The Committee recommended that steps should be taken to improve the socio-economic status of minorities, and of the Gypsy minority in particular. He hoped that more detailed information on that subject would be provided in the next report.

58. He would also like to know what progress had been made on the elaboration of the various federal laws referred to in paragraph 24 of the report and would appreciate copies once they had been adopted. As regards the settlement of the Chechen conflict, there had been some positive developments, but steps should be taken to solve the problems mentioned in annex 3, paragraph 6. Lastly, the information provided on the situation in Ossetia and Ingushetia was not sufficiently detailed.

59. In conclusion, the Committee recommended that the Russian Federation should disseminate the report - as well as the comments made by experts - widely and provide the public with any useful information in order to facilitate the implementation of article 14 of the Convention.

60. The delegation of the Russian Federation withdrew.

61. Mr. Aboul-Nasr resumed the Chair.

Review of the implementation of the Convention in Haiti

62. Mr. de GOUTTES (Country Rapporteur) recalled that, at its fifty-first session in August 1997, the Committee had received a note verbale from the Government of Haiti requesting it to defer consideration of the situation in that country to 1998 by which time it hoped to be able to submit a report. However, the Committee had decided to discuss that situation briefly in order to indicate its interest and to stress the following points which it hoped would be given priority in the next periodic report of Haiti: the ethnic composition of the Haitian population; socio-economic indicators of non-integration or marginalization of the most disadvantaged social groups;

discrimination against the black, mulatto and white population; and judicial statistics concerning racist crimes and measures taken to promote the implementation of the Convention. A letter signed by the Chairman of the Committee had been sent to Haiti requesting replies to those questions in its report, if necessary with the assistance of the advisory services of the Office of the High Commissioner for Human Rights.

63. The Committee had as yet received nothing from the Haitian Government and the only available information concerning the evolution of the situation in that country consisted of a report dated 17 October (A/52/499) by an independent expert, Mr. Adama Deng, and a report by the United Nations Secretary-General dated 22 October 1997 (A/52/515).

64. In his report, Mr. Deng emphasized the deterioration of socio-economic conditions in Haiti, which had resulted in strikes and was conducive to violence. Although the human rights situation in general had improved, instances of violations of those rights or, "political violence" persisted. In his view, the withdrawal of the United Nations missions (MITNUH and MICIVIH) could have tragic consequences for the future of Haiti and the democratization process.

65. The conclusions of the Secretary-General's report, to which he referred members of the Committee, were along the same lines.

66. Regarding the recommendations to be made to the Haitian Government, he suggested the following course of action. The Committee could invite the Haitian Government to submit its report in August 1998; remind it of the terms of the letter sent by the Chairman of the Committee in August 1997; request it to take into consideration, in addition to the five points listed in that letter, the conclusions of the reports of Mr. Adama Deng and the Secretary-General dated 17 and 22 October 1997; and finally, suggest once again that it should request the assistance of the advisory services of the Office of the High Commissioner for Human Rights if that would be helpful.

67. The CHAIRMAN proposed that course of action suggested by the Rapporteur should be adopted.

68. It was so decided.

The meeting rose at 1.05 p.m.



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of all Forms of
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Fifty-second session

SUMMARY RECORD OF THE 1248th MEETING.

Held at the Palais des Nations, Geneva,
on Tuesday, 3 March 1998, at 3 p.m.

Chairman: Mr. ABOUL-NASR

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CONVENTION (continued)

Initial report of Switzerland

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Initial report of Switzerland (CERD/C/270/Add.1; HRI/CORE/1/Add.29)

1. At the invitation of the Chairman, Mr. Held, Mr. Rohner, Mr. Dieffenbacher, Mr. Wyss, Mr. von Kessel, Mr. Voeffray, Mrs. Petter, Mrs. Sambuc and Mrs. Angst Yilmaz (Switzerland) took places at the Committee table.
2. Mr. HELD (Switzerland), introducing his country's initial report (CERD/C/270/Add.1), said that two representatives of the Federal Commission against Racism, a body established by the Federal Council following Switzerland's accession to the Convention, had been included in the delegation as evidence of the importance attached by the Swiss Government to its dialogue with the Committee. Given the Commission's independent status, its views did not necessarily coincide with those of the Government.
3. Switzerland's initial report (CERD/C/270/Add.1) had been drafted in French and translated into German and Italian, the country's other two main official languages.
4. In recent years, the Swiss Government, had acceded to the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Switzerland was also a State party to such regional treaties such as the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Charter for Regional or Minority Languages, and the Government had proposed to Parliament in 1997 that it should ratify the Framework Convention for the Protection of National Minorities, an instrument drafted by a committee of governmental experts chaired by Switzerland. In the case of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Switzerland had played a prominent role in developing the system of visits to places of detention. It was also actively supporting current efforts to draft a protocol additional to the European Convention on Human Rights to strengthen the principle of non-discrimination set forth in article 14.
5. In December 1996, Switzerland had accepted the amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination. Moreover, the adoption three years previously of criminal legislation making various types of incitement to racial discrimination punishable by law had enabled it to withdraw its reservation to article 20, paragraph 2, of the International Covenant on Civil and Political Rights.
6. As Switzerland was a country with a monist tradition, the Convention had been immediately applicable to all legislative, executive and judicial bodies. The Swiss Government and the Federal Tribunal had repeatedly affirmed the

principle of the primacy of international law over federal or cantonal law. As to the question of whether norms of international law were self-executing, according to Swiss jurisprudence and the practice of the Swiss authorities, a treaty provision could only be directly invoked in the courts if it was unconditional and sufficiently clear-cut to be applied as such in particular cases and to serve as the basis for concrete decisions. The courts were the final arbiters of applicability in such cases. In decisions regarding the Convention, the Federal Tribunal had not yet ruled on the direct applicability of its provisions but might well do so in the future.

7. Following accession to the Convention, Swiss criminal legislation had been amended to make acts of racial discrimination punishable by law, under articles 261 bis of the Penal Code and 171 c of the Military Penal Code. The former prohibited public incitement to racial hatred and racist propaganda, attempts to deny, grossly minimize or justify genocide or other crimes against humanity, and refusal of a public service, for example access to a public establishment, on racial, ethnic or religious grounds. Offenders were liable to terms of imprisonment ranging from three days to three years or to payment of a fine of up to 40,000 Swiss francs. Switzerland had gone beyond its obligations under the Convention by including discrimination on religious grounds and refusal of a public service among the punishable acts and by making the new provisions applicable not only to groups but to individuals. Moreover, punishable acts were prosecuted ex officio and did not require the filing of a complaint. Although the new provisions had been adopted by a very large majority of the two Chambers of the Federal Parliament, opposition to the legislation, chiefly on the grounds of freedom of expression and information, had necessitated the holding of a referendum. During the campaign, the Federal Government, representatives of the Catholic, Protestant and Jewish communities and various other bodies had engaged in a joint effort to explain the purpose of the legislation and dispel fears of its consequences. The new provisions had been endorsed in September 1994 by 54.7 per cent of the votes cast.

8. There had been some 30 convictions under the legislation to date and a number of cases were pending at the cantonal level. The courts had not hesitated to sentence offenders to terms of imprisonment: in one case a two-month mandatory sentence had been handed down. Suspended sentences had ranged from four days to six months and fines from 200 to 5,000 Swiss francs. Most of the offences had involved racist or anti-Semitic acts, statements or writings. There had been no conviction to date for denial of a public service, partly perhaps owing to the difficulty of proving racist motivation for a verbal refusal. A number of convictions had concerned the prohibition on denial or justification of genocide or other crimes against humanity, in particular the distribution in Switzerland of Roger Garaudy's book Les mythes fondateurs de la politique israélienne (The founding myths of Israeli policy). The main distributor had been given a four-month suspended prison sentence and two bookshops in Geneva had been fined.

9. In a ruling of 5 December 1997, the Federal Tribunal had interpreted key components of the new legislation in a case concerning the mass mailing of letters containing anti-Semitic material. The Tribunal, rejecting an appeal against the prison sentence and fine, had stated that the legislation also covered acts which, while not constituting direct incitement to racial hatred

or discrimination, "stirred up" or "aroused" such feelings. An explicit reference had been made to article 4 of the Convention. The fact that several cases under the new legislation had attracted considerable public and media attention had reinforced its preventive impact.

10. In addition to the Federal Commission against Racism, the Swiss authorities had established a Federal Commission on Foreigners whose mandate was described in paragraph 175 of the report. A number of similar institutions operated at the cantonal and communal level, in particular two commissions in the cantons of Zug and Valais. Advisory bodies for foreigners existed in some - mostly urban - communes and in most cantons. One of the oldest was the Immigrants Advisory Chamber in Lausanne which sought to involve the city's foreign communities in political decision-making. Thirteen of the 42 members were immigrant representatives elected by universal suffrage and the other members, in many cases also of foreign extraction, were delegated by the municipality, the communal council and trade union, employer, social and religious bodies.

11. The Swiss Government was committed to an intensification of measures in support of integration at all levels of the State. Integration was not to be confused with assimilation and did not imply renunciation of cultural identity or nationality. The cities of Berne and Zurich had developed integration policy guidelines. Foreigners in the canton of Neuchâtel had been entitled to vote at communal level for several decades. A movement entitled "Salut l'étranger" had been set up in 1994 with the support of the cantonal authorities to promote interaction between foreign communities and the rest of the population. The movement planned to stage over 60 events during the current year. Two federal committees of experts had recently drawn up proposals to promote integration in the following areas: the labour market, schools and vocational training; integration of foreign women; community activities and leisure; participation and joint responsibility in political life. A proposal currently before the Federal Parliament to include an article on integration in the legislation dealing with residence and settlement rights of foreigners would call for an increase in the Confederation's financial appropriation and would boost the activities of organizations and individuals engaged in the promotion of integration.

12. The "three circle" immigration policy model described in paragraphs 52 to 56 of the report was being reviewed in the light of proposals by a committee of experts. The Government would shortly submit a report on the subject to Parliament. Under the proposed new policy, the "three circle" model would be discarded. Aside from a special regime for nationals of European Union States, no distinction would be made on grounds of country of origin. Emphasis would be placed instead on vocational qualifications, general education, age, language skills and vocational mobility. Decisions on admission of foreigners to Switzerland would be made in the light of the country's international obligations and humanitarian motives. Persons whose application for asylum was pending, those admitted on a provisional basis and foreigners whose departure could not be made effective would be issued with a provisional residence permit. The rules governing different categories of residence would be simplified and the status of seasonal resident would be abolished and replaced by a short-term permit. All persons holding a residence permit would be authorized to bring their families to Switzerland.

13. The foundation for Swiss travellers referred to in paragraph 42 of the report had been established in May 1997. It would seek solutions to such problems as accommodation sites, trading licences and schooling, serve as a forum for consultations between travellers' representatives and the central and local authorities, and generate public awareness of the travellers' situation.

14. The Human Rights Committee and the Committee against Torture had expressed concern at allegations of ill-treatment, chiefly of foreigners, by cantonal police officers. In addition to the requisite punishment of such offences by the appropriate authorities and the courts, preventive action had been taken in recent years in the form of two intercultural awareness programmes for cantonal police officers proposed by the Conference of Heads of Cantonal Justice and Police Departments and implemented by the Swiss Police Academy. The themes of the programmes were "Police, migrants and ethnic minorities" and "Human rights and fundamental freedoms".

15. In December 1994, the Swiss Parliament had adopted a Federal order aimed at promoting cooperation with the International Criminal Tribunals for the former Yugoslavia and for Rwanda. The order committed Switzerland to action on any applications for arrest and transfer of wanted persons by the Tribunals. Several arrests had been made and one accused person had been transferred to Arusha in August 1997. Switzerland also actively supported the establishment of a permanent international criminal court.

16. Mrs. SAMBUC (Switzerland), speaking on behalf of the Federal Commission against Racism, said that, while the Commission had been appointed by the Federal Council, it was not an administrative body. Its members were not civil servants but represented civil society, in particular anti-racist non-governmental organizations (NGOs). The Commission focused on awareness-building and prevention in a spirit of genuine independence. It had, for example, criticized the Government's "three circle" policy. A report on anti-Semitism prepared at the Government's request would shortly be published.

17. The Commission sought in all cases to stimulate public debate and to avoid adopting a judgemental approach. Although there had been disturbing manifestations of rejection of nationals of countries outside the European Union and members of the Jewish minority in Switzerland, she stressed the existence of a tradition of tolerance of minorities and the generally untroubled coexistence of Swiss nationals and foreigners, especially in areas where there was a large foreign community. Of course, racism could also be a problem for Swiss citizens, particularly the travelling community which had difficulties in finding employment and maintaining its way of life. The Commission had full confidence in the process set in motion through Switzerland's ratification of the Convention.

18. One reservation was, however, in order: independent though it was, the Commission nonetheless depended on the authorities for financial support, and those resources were still altogether inadequate, as were those provided to the local NGOs on which it relied. It remained, therefore, to convince the authorities to give it the necessary resources to carry out its task.

19. Mrs. ANGST YILMAZ (Switzerland) said the Commission had a broad mandate, as it dealt with all forms of racial discrimination, whether direct or indirect. It could choose the main areas of its activities. For the first two years, those areas had included the "people of the road" or Jenisch minority, the integration of foreigners, the causes of racism, the situation of Muslims and the resurgence of anti-Semitism as a result of the debate over the Jewish funds in Swiss banks. The Commission had launched a publicity campaign that had received a United Nations award, had begun publishing a newspaper targeting the labour world, was promoting research on racism and xenophobia and distributed its bulletin free of charge to members of Government. It had regular contacts with authorities at the federal, cantonal and local levels in order to make them more aware of the problems of racial discrimination, and had stressed the responsibility of the authorities to institute proceedings ex officio under the new article 261 bis of the Penal Code. It also played the role of ombudsman, although in that capacity it was limited by the fact that its powers were purely advisory.

20. The CHAIRMAN thanked the delegation for its introduction of the report, noting that it was the first time ever that a State Party's delegation had included members whose views did not represent those of the Government.

21. Mr. van BOVEN (Country Rapporteur) said he considered everything that had been said during the introduction of the report as the voice of the State Party.

22. In addition to the initial report and the core document (HRI/CORE/1/Add.29), he had made use of such other sources of information as the bulletins of the Federal Commission against Racism, a report of the Swiss Forum against Racism and a monograph on racist incidents by Mr. Hans Stutz. While he welcomed Switzerland's recent ratification of a number of international human rights treaties, he noted that the State Party had entered two reservations to the Convention, and one general issue requiring clarification was the status of the Convention within the domestic legal order. The crucial question was the extent to which the provisions of the Convention might, directly or indirectly play, a role in the court practice of Switzerland, although there had as yet been no formal judicial decisions in the matter. Another general issue was that of the specific measures taken to implement the Convention - the creation of the Federal Commission against Racism and the introduction into the Penal Code of article 261 bis in order to give effect to articles 4 and 5 (f) of the Convention. Important though they were, were those two measures sufficient to guarantee full effect of the Convention in Switzerland?

23. With reference to the recent Federal Act on Equality between Men and Women, were there not equally valid and pressing grounds for introducing a general federal act on equality, or a federal act on non-discrimination based on race, colour, descent or national or ethnic origin?

24. The report, which by and large followed the Committee's guidelines, contained insufficient information on actual practice, measures taken to afford reparation and satisfaction to victims of racial discrimination and racial violence, and preventive policies. With regard to the substantial foreign population in Switzerland, the extensive system of control over

foreigners, particularly by the police, and the classification of foreigners into different categories, which was in its effect stigmatizing and discriminatory, were matters of serious concern.

25. He was grateful for the information provided on minorities. The Jenisch minority deserved particular attention. The revelations of abuses committed against them in the early 1970s, (paragraph 40 of the report), were a sad illustration, by no means unique to Switzerland, of what could happen to marginalized people with different lifestyles. He therefore noted with interest the delegation's announcement of the creation of a special foundation working on their behalf. The Committee would meanwhile wish to monitor closely what measures of reparation were being and would be taken, and would appreciate more information on steps being taken to ensure the Jenisch unhindered travel beyond cantonal borders. At present they were apparently subjected to 26 different laws restricting their residence and movement. What remedial measures were being taken against the criminalization and discreditation of the Jenisch as well as the Sinti and Roma by the police and other public authorities?

26. The report frankly acknowledged the criticism that naturalization policies and procedures were too long and too selective. While it was the sovereign right of each State to confer its nationality on people, the effect of the classification of foreigners was that, in granting the right to nationality, distinctions, exclusions, restrictions or preferences were being made in Switzerland on the basis of race, colour, descent or national or ethnic origin.

27. With regard to Switzerland's reservation to the Convention in respect of its immigration policy (paragraphs 52-56), by which it reserved the right to apply its legal provisions concerning the admission of foreigners to the Swiss labour market, the report explained that the policy was based on the "three circle" model described in paragraph 54. The policy was quite frank in listing the criteria for classifying a country in the middle or outer circle, one of those criteria being "a culture marked by European ideas ... and with living conditions similar to our own". While he had just been informed that the model might soon be amended, the issue warranted scrutiny. The report itself conceded that it certainly made admission more difficult for persons belonging to other ethnic groups or "races", because of their limited capacity for integration, the Federal Commission against Racism had publicly considered that policy to be contrary to the Convention, as it was ethnocentric, Eurocentric and violated human dignity, and it was his own belief that it should be abandoned. The Government's argument that the policy was not intended to be racially discriminatory overlooked the fact that the definition of "racial discrimination" in the Convention referred not only to purpose but also to effect. Furthermore, while a major school of thought in international law was that each country was sovereign in making reservations, provided such reservations were not incompatible with the object and purpose of the Convention, the "three circle" model, which was covered by the reservation, was indeed contrary to the object and purpose of the Convention. It had a racist effect not only on immigration policies but also on parts of the population already living in Switzerland.

28. The report's discussion of the principle of equal treatment and its application to relations between individuals (paragraphs 57-58) was unconvincing. The interpretation of provisions of private law described in paragraph 57 was somewhat vague in regard to the clear language of article 2, subparagraph 1 (d) of the Convention. His misgivings were deepened by the fact that, in their private contractual relations, so long as no criminal offence was being committed, individuals could conclude employment contracts or rental agreements, for example, with parties of their choosing, notwithstanding the prohibition of racial discrimination. The Government had emphasized that the Convention covered only the area of "public life", and that the sacrosanct Swiss principle of freedom of contract remained unchanged. What was public life and what private life, however? Were not major changes under way in those concepts in both national and international law? Was freedom of contract as inviolable a principle as was sometimes suggested, particularly when one side was very strong and the other vulnerable and disadvantaged? What was the position of Swiss law if a big housing contractor refused to enter into lease agreements on racial or ethnic grounds? Would not a general law on equality or a comprehensive law against racial discrimination serve a better practical and preventive purpose in implementing the Convention than the vague notions referred to in the report?

29. Article 3 of the Convention, on racial segregation and apartheid, was often mistakenly identified as being related to South Africa only. He drew the Swiss Government's attention to the wider meaning and importance of article 3 in the light of the Committee's General Recommendation XIX and invited it to report more fully in the next periodic report. Moreover, having followed Swiss relations with the apartheid regime over several decades, he could only say that paragraphs 61-63 of the report failed to give a full and balanced picture of those relations.

30. Regarding article 4, the criminal law approach was only one aspect of a broader strategy for combating racial discrimination. Two of the Committee's general recommendations explained the scope of article 4. Article 261 bis of the Penal Code largely covered article 4 (a), but he wondered whether there was any reason for its omission of a reference to national origin. He did not understand the statement in paragraph 72 that article 5 (f) did not oblige States to make it illegal to refuse access to places or services intended for use by the general public. Such refusal was certainly illegal under the Convention, even though the Convention did not require it to be made a punishable offence. Article 261 bis was narrower in scope than article 4 (a) of the Convention because the infraction of public peace required a higher threshold of criminality than the violation of human dignity. Was that interpretation correct? More information would be welcome on the interpretation and application of article 261 bis by the judicial authorities. In view of the "due regard clause" in the umbrella provision of article 4 of the Convention itself, the Swiss reservation to that article was, legally speaking, redundant. It appeared that the reasons for that reservation had been mainly political, Switzerland had still not given effect to the last part of article 4 (b), viz., that participation in organizations which were declared illegal and were prohibited must be recognized as an offence punishable by law. He would appreciate the delegation's comments.

31. In connection with article 5, he stressed the importance of combating discriminatory practices in regard to economic, social and cultural rights, especially for racially and ethnically disadvantaged people, and referred with concern to the fact that the Federal Act relating to coercive measures in some cases permitted the administrative detention of foreign nationals without a temporary or permanent residence permit, including asylum seekers and minors over the age of 15, for up to one year, pending expulsion. The prescribed periods of detention were far longer than necessary, and furthermore, the coercive measures led to a general criminalization of asylum seekers.

32. Regarding the right to security of person, ill-treatment had been alleged in the course of arrests or police custody in respect of foreign nationals or Swiss citizens of foreign origin. A case in question was that of the human rights defender Mr. Clement Nwankwo, an African lawyer attending a Commission on Human Rights session who had been arrested, humiliated, ill-treated and sentenced. His case was illustrative of many others in Switzerland but was of special concern because his skin colour had certainly not been without effect in the accusation, brutal arrest and summary sentencing. Such racist incidents must be prevented in future, in keeping with General Recommendation XIII on the training of law enforcement officials in the protection of human rights. Information should be provided on the training programme under way for the police, which should continue and should be given priority.

33. At present, only the cantons of Neuchâtel and Jura accorded the right to vote to foreigners, and in some cantons and communes foreigners could be appointed to sit as members of official committees. What could the federal authorities do to have those commendable practices accepted on a wider scale?

34. With reference to freedom of movement and residence within the State, he noted that the reports invoked article 1, paragraph 2 of the Convention as justification for the limitations imposed on foreigners (paragraphs 105-106). However, that article did not refer to distinctions, exclusions, restrictions or preferences as between different categories of non-citizens, which were sanctioned in the "three circle" model. That therefore raised questions as to its conformity with the Convention.

35. As to freedom of opinion and expression, the 1948 decree concerning political speeches by foreigners (paragraph 135) should be abrogated or amended so as to bring it into conformity with international standards, as recommended by the Human Rights Committee.

36. With regard to economic, social and cultural rights, while foreign workers were purportedly protected against any racially motivated termination of their employment, and lessees were protected against acts of racial discrimination, as stated in paragraphs 153 and 162 of the report, he wished to know how effective those types of protection were and whether they were enforced under labour and civil law. To what extent was financial assistance for the improvement of housing and the promotion of construction and home ownership used for the special benefit of racially and ethnically disadvantaged groups and persons?

37. Regarding article 6 of the Convention, the core document (HRI/CORE/1/Add.29) explained the system of compensation and rehabilitation of victims and paragraph 167 of the report mentioned that article 261 bis of the Penal Code provided victims of racial discrimination with legal remedies. However, information was needed on the number of complaints lodged and proceedings initiated and on cases in which victims had received some form of reparation or satisfaction.

38. He had been informed that the cantonal guidance centres of Geneva and Vaud, and possibly others, did not acknowledge that victims of racial discrimination could also suffer mental harm and thus be entitled to claim compensation and moral damages. He considered that approach to be unduly restrictive and asked what influence the federal authorities could exert to ensure that the Federal Law on Assistance to Victims of Offences was applied correctly so that justice could be done in accordance with article 6 of the Convention.

39. The Swiss authorities had established the Federal Commission against Racism, in accordance with the Committee's General Recommendation XVII (42). However, it seemed that the Commission was seriously understaffed given its volume of work. Since Switzerland had become a party to the Convention, was the Government prepared to give substantive support to the Commission and other Swiss organizations and bodies whose activities related to areas covered by articles 2 (e) and 7 of the Convention?

40. Although the cantons were mainly responsible for the practical implementation of the principles of anti-racist education, the State and hence the federal authorities were required to ensure compliance with Switzerland's international commitments under the Convention.

41. The report did not refer to article 14 of the Convention. It appeared that Switzerland was waiting to decide whether to make a declaration under article 14 until it could assess its experience with reporting procedures under the Convention. Having now gained experience of those procedures, the Federal Council was encouraged to consider recognizing the right of individual petition. Switzerland should be congratulated for ratifying the amendment to article 8, paragraph 6 of the Convention.

42. Switzerland's ratification of the Convention and submission of an initial report were welcome developments. Since becoming a party to the Convention, Switzerland had taken important steps in the fight against racial discrimination. However, the deeply rooted feelings of antagonism towards people of foreign origin in Switzerland, powerful and sometimes brutal police control and an officially declared immigration policy that jeopardized the object and purpose of the Convention meant that a more comprehensive strategy to comply fully with the provisions of the Convention and eliminate racial discrimination was needed.

43. He hailed the statement that the Federal Council was considering publishing the results of the consideration of Swiss reports by human rights treaty monitoring bodies. What concrete measures were envisaged? Finally, information was needed on the situation of Albanians from Kosovo who were

seeking asylum in Switzerland. It seemed that their petitions would be turned down, meaning that they would be forced to return to their country of origin where the situation was increasingly threatening.

44. Mr. VALENCIA RODRIGUEZ applauded the initial report of Switzerland which broadly followed the reporting guidelines laid down by the Committee.

45. The Swiss policy referred to in paragraph 44 of the report, concerning restrictions on the number of new foreign immigrants admitted into the country and quotas for residence permits for engaging in gainful activity, was understandable up to a point. If applied equally, to all foreigners without distinction, then there was no reason for the Committee to be concerned. The danger, however, was that elements of discrimination on the basis of ethnic or national origin could creep into such a policy.

46. He noted that the "integration" policy mentioned in paragraph 46 of the report was not synonymous with assimilation. Foreigners were being accepted into the Swiss community without having to renounce their cultural, national or ethnic background and characteristics.

47. He was pleased to hear that the "three circle" model was to be abandoned. While it was understandable that favourable treatment would be given to individuals from certain groups of countries on the basis of regional agreements, the concern was that other forms of differentiation or discrimination, for instance on grounds of ethnic or racial origin, could come into play in the case of nationals from countries not covered by those agreements. Thus with the end of the "three circle" model, the Government of Switzerland should consider withdrawing its reservation to article 2, paragraph 1 (a) of the Convention.

48. The new article 261 bis of the Penal Code was a welcome development in terms of compliance with article 4 of the Convention. However, it was worrying that mere membership of racist organizations was not punishable by law. The Government of Switzerland should consider withdrawing its reservation to article 4 of the Convention.

49. With regard to article 5, Switzerland restricted certain rights in the case of foreigners. Once again, care should be taken to ensure that those restrictions applied to all foreigners and not just to certain categories.

50. Mr. RECHETOV congratulated the Government of Switzerland on its impressive and well-prepared initial report. He had a deep respect for Switzerland's social system, its institutions and its contribution to stability in Europe as a whole. Objective interaction with the State Party would help improve ethnic relations in Switzerland, improve implementation of the Convention and redound to the good of the Swiss people themselves.

51. On the question of minority languages, he wondered whether the fact that the use of Rhaeto-Romansch at the federal level would be "regulated by statute" would imply any restriction on its use. It was to be hoped that the threat to the existence of Rhaeto-Romansch, mentioned in paragraph 30 of the report, was not the result of restrictive policies.

52. Paragraphs 34 and 50 described Switzerland's obligation to ensure equality before the law. Certain measures, such as police control, including, for example, by keeping records of certain foreigners' movements, were not always palatable but could be seen as valid in specific circumstances, particularly if the individuals posed a threat to the State.

53. It was commendable that Switzerland was considering changing its "three circle" model of immigration policy which made false value judgements as to the contribution nationals of a certain country could make to Swiss society. The reference in paragraph 56 to a criterion of capacity for integration was worrying in that it implied that some ethnic or national groups were better able to integrate than others, an attitude that was contrary to the spirit of the Convention.

54. With reference to paragraph 58 of the report, Switzerland should ensure that all provisions of the Convention were implemented in both the public and private sectors.

55. It was pleasing to note that Switzerland recognized that although freedom of expression was important in a democratic State, if discriminatory speech constituted an attack on human dignity, public interest in the exercise of freedom of expression had to give way before the greater interest of a victim of discrimination.

56. Mr. BANTON, who endorsed the remarks of the previous speakers, referred to the case of Clement Nwankwo, which had also been considered in the Committee against Torture. Quoting a statement attributed to the Geneva Chief of Police, he said that the police officer who had assaulted Mr. Nwankwo had apparently been given one week of unpaid suspension. He was astonished: in the United Kingdom, for example, a police officer who was found by his or her superiors to have assaulted a member of the public could expect to be prosecuted and, if convicted, almost certainly sentenced to imprisonment, which might or might not be suspended, and would surely be dismissed. The statement in question thus raised the question whether Switzerland was discharging its obligations under article 5 (b) of the Convention.

57. The CHAIRMAN, speaking in his capacity as a member of the Committee, said he shared Mr. Banton's astonishment, just as he had been surprised to hear earlier in the meeting that a person had been severely punished, even before France had taken a decision on the subject, merely for selling a book by the French author Roger Garaudy, despite the fact that Switzerland had entered a reservation on the application of article 4 of the Convention. Apparently it was the target of the offence that mattered: for example, in Switzerland no one had thought to indict the distributor of Salman Rushdie's book, which had insulted Islam, the Muslims and the Arabs, whereas Garaudy had merely questioned how many had died in the gas chambers. To cite another example, two years previously a drawing insulting to Arabs and Muslims had appeared on the cover of a telephone book in Switzerland. Yet the person responsible had not been brought to justice; instead, the book had been withdrawn from circulation later on, and the matter had been closed. When a Muslim or an Arab was concerned, everything was allowed.

58. Mr. DIACONU pointed out that the Committee did not confine itself to questions of discrimination against foreigners; racial discrimination could also affect a country's own nationals, either individually or as a group, a fact that was recognized in paragraph 38 of the Swiss report.

59. It was important for the domestic law of every State to contain specific provisions defining and punishing racial discrimination. General references to the equality of citizens were insufficient. Given the high percentage of foreigners residing in the country, Switzerland must comply strictly with all provisions of the Convention, especially as the Swiss delegation had itself acknowledged that rejection and intolerance were on the rise.

60. Concerning article 4, he said that Swiss law contained no definition of the offence of racial discrimination and that such an offence called for more severe punishment; it should therefore be reviewed. It was encouraging to note that under prevailing Swiss doctrine, a peremptory rule of international law (jus cogens) could be a justification for declaring a popular initiative for the adoption of legislation null and void (paragraph 87 of the initial report). He pointed out that the prohibition of racial discrimination was in fact recognized as a peremptory rule of international law by most legal experts and the various United Nations bodies, including the International Court of Justice.

61. In connection with article 5 (d) (ix), he was not very satisfied with the explanations given in paragraph 146 of the report. That it was for the judge to pronounce the dissolution of associations dangerous to the State was the case in all countries. The point was that it must be possible to cite racial discrimination as the reason for disbanding such an association.

62. Regarding the use of language, could foreigners and their children learn and receive schooling in their mother tongues?

63. Mr. NOBEL referred first to the infamous "three circle" policy (paragraphs 54-56) which illustrated the dilemma facing a number of European States as they sought to reconcile the introduction of restrictive immigration policies, particularly directed against non-European immigrants, with fulfilment of their obligations under the Convention. A policy deliberately designed to keep non-European immigrants to an absolute minimum contained the seed of racism. It was therefore of the essence, when formulating immigration policy, to ensure that it was free of any racist element. In retrospect, the former United States quota system for immigrants had been clearly racist. Consequently, while noting that the reference to the three circle model showed the sincerity of the report, he stressed the importance of analysing its underlying philosophy.

64. Concerning paragraphs 57 and 58, there seemed to be some confusion between the concepts of private life and private sector. Needless to say, people could not be forced by law to comply in their private lives with the principles of non-discrimination and must be free to choose their friends and family: that came under the notion of private life. The private sector, on the other hand, had to do with employment, housing, education, credit and financing, leisure activities and culture, at least to the extent that

economic activity was involved. From the point of view of the victims, it was irrelevant whether discrimination was in the public or the private sector. The point was to eliminate discrimination throughout public life.

65. The CHAIRMAN, speaking in his capacity as a member of the Committee, observed that the problem of immigration was not just a European but a global phenomenon. In his own country, there were 4 million Sudanese immigrants. Immigration had caused enormous problems in many African countries.

66. Mr. GARVALOV said that everyone recognized that Switzerland was a democratic society with long-standing traditions. A number of points in the report were, however, debatable. Concerning cultural and religious minorities (paragraphs 27-32), he understood that Switzerland had ratified the Framework Convention for the Protection of National Minorities. How did the State Party define the term "national minority"? In the report, it was stated that Switzerland did not have ethnic minorities and that all minorities listed were either linguistic or religious minorities. Were two persons with the same mother tongue automatically of the same ethnic stock?

67. There were roughly 68,000 speakers of Rhaeto-Romansch. The initial report spoke of 0.6 per cent of the population, whereas the core document (HRI/CORE/1/Add.29) gave a figure of 0.8 per cent. There were sizeable immigrant communities in Switzerland, many of which contained far more speakers of their native tongues than the Rhaeto-Romansch community did, yet nothing was said about those languages.

68. The Committee and the State Party were clearly in disagreement about article 4 of the Convention, and he looked forward to the next periodic report, which he hoped would contain further consideration of that provision.

69. Regarding Switzerland's integration policy (paragraphs 45-46), if successful integration depended on the frequency of social contacts and diversity of social contacts at the workplace and in leisure pursuits, he wondered whether immigrants had any time left to maintain their own language and culture.

70. He was intrigued by the "three circle" model, especially the criterion given in paragraph 54 (b) for classifying a country in the middle or outer circle, namely, a culture marked by European ideas in the broadest sense of the term. Did Bulgaria, for example, which had been founded in Europe in the seventh century and had adopted Christianity in the eighth century fall into that category?

71. With regard to article 7, he asked whether the information contained in paragraphs 181 to 183 referred to initiatives that would be implemented in the Swiss school system in the future. As to paragraph 184, if the Confederation's role in the campaign to combat racism in the education system was limited because of Switzerland's federal structure, then what was the point of ratifying the Convention?

72. Mr. de GOUTTES said that he was pleased to learn that Switzerland was looking into its integration policy and intended to abandon its three circle immigration policy model.

73. His first question concerned the drafting of article 4 of the Swiss Constitution. As he understood it, that provision did not refer expressly to race or skin colour, although according to the report, the case law of the Federal Court interpreted it as including racial and ethnic discrimination, and while it only expressly protected Swiss citizens, once again, case law extended application to foreigners as well. Were there any plans to revise article 4 to make that protection more specific?

74. According to paragraph 58 of the report, the refusal to provide goods or services or to sell or rent lodging for reasons of race or ethnicity was an offence only where the public sector was concerned, and it was difficult to prove such behaviour. Could the Swiss delegation cite concrete examples of such difficulty?

75. Participation in a racist organization did not constitute an offence, Switzerland having made a reservation in connection with article 4. Did the Swiss Government intend to maintain its reservation, and had there been any discussion on the subject?

76. He was pleased that Swiss legislation made it an offence to deny the existence of the crimes committed during the Nazi period. In that context, he disagreed with the Chairman's criticism of the prosecution of the writer Roger Garaudy. In his view, denial of the crimes against humanity committed in the Nazi period must be prosecuted, and he failed to see what the connection was with the Salman Rushdie case, notwithstanding his own concern for the protection of Islamic and other religious values.

77. Given that a revision of the Constitution concerning acquisition of nationality had been rejected by the cantons (paragraph 26 of the initial report), he asked whether there were plans to make a renewed attempt to reform naturalization legislation. That would be an important step, for the reasons acknowledged in the report itself, in paragraphs 112 and 26.

78. Lastly, it would be useful to know whether acts of racism committed by police officers had been prosecuted. According to the non-governmental organization (NGO) Forum contre le racisme, there had been a number of complaints against police officers for racist acts. The same NGO had asserted that certain right-wing extremist groups of Nazis and skinheads were active in Switzerland. He asked whether such groups were prosecuted, as indeed they should be, since such prosecution did not require a prior complaint, but was instituted ex officio by the public prosecutor.

79. He hoped that Switzerland would give serious consideration to signing the declaration under article 14 of the Convention and observed that that provision was not in conflict with the referral of individual petitions to the European Court of Human Rights.

The meeting rose at 6 p.m.



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of all Forms of
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Fifty-second session

SUMMARY RECORD OF THE 1249th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 4 March 1998, at 10 a.m.

Chairman: Mr. ABOUL-NASR

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GE.98-15448 (E)

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Initial report of Switzerland (CERD/C/270/Add.1; HRI/CORE/1/Add.29)
(continued)

1. At the invitation of the Chairman, the delegation of Switzerland resumed their places at the Committee table.
2. Mr. YUTZIS referred back to paragraph 56 of the report which gave a very realistic summary of the question of accepting, admitting and integrating foreigners. Throughout history, foreigners had been regarded as a threat and Switzerland was no exception in that regard. Racial factors did not seem to be behind Switzerland's "three circle" immigration policy, which nevertheless created discrimination because it was based on differentiation, and it was well known that it did not take much for the idea of difference between peoples to create feelings of superiority. Further thought should be given to that issue.
3. Paragraphs 57 and 58 of the report also needed to be looked at since they showed how difficult it was to make a clear distinction between the private and public sectors. Discrimination was clearly prohibited in the latter but not in the former which was one of relationships between individuals. The problem of ensuring respect for the principle of non-discrimination in the employer-employee relationship, which cropped up in both sectors, clearly illustrated the difficulties that arose.
4. Referring to the sentence in paragraph 56 that read: "However, the Federal Council is convinced that Switzerland, like most other countries with above-average economic development, must in principle maintain its restrictive policy towards the admission of foreigners to the increasingly specialized Swiss labour market", he noted that the problem would become increasingly linked to that of employment. Unemployment was rising steadily throughout the world and it was highly unlikely that the trend was going to be reversed for some time. That raised the question of protecting the most vulnerable people. If it was a given that the State did not want to, could not or should not intervene, it would be up to the market to sort things out. Was it conceivable that the Market would provide that protection? Since the globalization of the economy would certainly lead to increasingly restrictive employment policies, the problem would no longer be of a strictly domestic nature but international, and he cautioned against excessive realism in policies that could make suffering and injustice an everyday feature of life.
5. Mr. SHAHI said that the "three circle" model that had been introduced to regulate immigration was not only in contravention of articles 1 and 2 of the Convention, but also seemed to be at variance with article 4 of the Constitution of Switzerland, which guaranteed equality and prohibited preferential treatment for certain categories of persons. It was quite understandable that Switzerland should need protective measures but the "three circle" model should be replaced.

6. He noted that Switzerland had tried to implement article 4, paragraphs (a) and (c), but with regard to paragraph (b) he asked whether it had the wherewithal to combat racist propaganda which could be circulated on the Internet.

7. Mrs. SADIO ALI was concerned at the situation of the small Rhaeto-Romansch population which was listed among linguistic minorities. She asked to what extent it participated in power-sharing, whether it was represented in federal, cantonal or communal bodies and what the State was doing to help it.

8. Mr. HELD (Switzerland), Vice-Director of the Directorate for Public International Law in the Federal Department for Foreign Affairs, recalled the measures that the Government of Switzerland had taken to implement the Convention. They included, as Mr. van Boven had emphasized, the establishment of the Federal Commission against Racism, which was responsible for preventing acts of racism, and the promulgation of article 261 bis of the Penal Code on the punishment of such acts, as well as initiatives to ensure the integration of foreigners, efforts to train police forces and the establishment of a foundation for Swiss travellers.

9. He denied the allegations that Switzerland occasionally took refuge behind its federal system in order to shirk its obligations. That was not the case. It was true, however, that a system of that nature was rather cumbersome and took a long time to achieve objectives.

10. With regard to the delicate problem of guaranteeing equality of treatment in the private and public sectors, the Committee had suggested the adoption of a general legislative instrument that would govern relations between individuals, but in point of fact it was the courts that were supposed to play a major role in clarifying such matters by their interpretation of article 261 bis, paragraph 5, of the Penal Code.

11. He was not in a position to reply to the questions concerning the possible withdrawal of the reservation to article 2, paragraph 1 (a) of the Convention - which the abandonment of the "three circle" model would make possible - since the relevant legislation had not yet been promulgated.

12. The Committee had also asked whether the Swiss State intended to make the declaration under article 14 of the Convention. He explained that the kind of complaint covered by that article was accepted under the Swiss foreign policy programme for the 1990s but that as yet Switzerland had too little experience with the operation of the Convention to make the declaration in the near future.

13. He had carefully noted Mr. van Boven's appeal on behalf of the persons from Kosovo who could be sent back to their country. He explained that they were asylum seekers who had been processed in accordance with applicable norms, and particularly those in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He added that

since the violence in Kosovo had not become widespread, the re-admission agreement that had been signed with Yugoslavia was still valid. However, Switzerland was closely following developments in Kosovo.

14. Mr. WYSS (Switzerland), from the Federal Office for Justice, referring to the suggestion that Switzerland should adopt detailed legislation on non-discrimination, explained that when the matter had been put to the cantons, most of them had come out against the idea because they had felt it was unnecessary. However, there was full agreement that the principle of non-discrimination should be respected and protected, even in relations between individuals. For that reason, article 261 bis, paragraph 5, of the Penal Code criminalized acts that violated the rights set forth in article 5 (f) of the Convention. Furthermore, the importance attached to human rights, such as those guaranteed by the Convention, influenced relations between individuals insofar as, for example, the discretionary power to assume or avoid contractual obligations could thereby be limited. In that regard, article 31, paragraph 3, of the draft revised constitution expressly stated that human rights had to be respected in private life and that State authorities were obliged to adopt positive legislative, judicial and administrative measures to that effect. The draft was before Parliament and would probably be voted on in 1999. As the Committee could see from paragraph 37 of the initial report (CERD/C/270/Add.1), article 7 specifically prohibited discrimination. The fact that Switzerland ensured implementation of the principle of non-discrimination, including in private life, despite the absence of specific legislative provisions on the subject was illustrated by the punishment of an employee who had used his office equipment to send blatantly racist messages.

15. Moving on to the question of Switzerland's reservations to article 4 of the Convention, he said that they reflected the decision - of Parliament in particular, as the body that was competent to approve a reservation - to leave it up to the authorities to strike a balance between the various freedoms guaranteed in international and regional human rights instruments. It was for the courts to make the distinction between an admissible public speech and an inadmissible racist statement on the basis of case law and the relevant recommendations of international standard-setting bodies. As the Federal Council had stressed on several occasions, some cases had nothing to do with freedom of opinion or speech, and no legal protection of any kind could be given to statements that clearly violated the basic right to human dignity. Switzerland's reservation merely attached greater importance to the expression "with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention" in article 4 of the Convention.

16. Mr. von KESSEL (Switzerland), from the Federal Office for Justice, pointed out that article 261 bis of the Penal Code did not refer to national origin for fear that the expression could be misunderstood, inter alia, with regard to provisions on acquiring Swiss nationality. Furthermore, Alexandre Guyaz in his book L'incrimination de la discrimination raciale (1996) stressed that national origin was a relatively vague concept was remarkably close to that of ethnic origin. Nevertheless, legislators did not dismiss other aspects which were covered by the generic expression "ethnic identity".

17. He explained that the fact that article 261 bis was included under Title 12 of the Penal Code on crimes or offences against public order certainly did not mean that public order was the only area it protected. Under article 261 bis, public order could be threatened if the human dignity of a group of individuals was violated. Therefore, the criterion of human dignity was the best gauge of whether an act or a statement violated article 261 bis.

18. Switzerland had entered a reservation to article 4 (b) of the Convention because it had felt that making membership of a racist organization a criminal offence was tantamount to believing that anyone who wanted to join that kind of organization knew beforehand that it was unlawful and was aware that joining it would leave him or her open to criminal proceedings. That would have violated the basic principle of freedom of association.

19. Some States investigated organizations that were being set up. Swiss law did not provide for that kind of action. Non-profit-making organizations acquired legal personality simply by registering their statutes.

20. Furthermore, prior investigation would be regarded not only as anti-constitutional, but would probably do nothing to prevent the establishment of racist organizations. The real aims of an organization were in many cases not obvious from its statutes. Similarly, someone who wanted to join an association could hardly be expected to know what its goals were before joining.

21. Mr. HELD (Switzerland) emphasized that the aim of article 261 bis was both to protect human dignity and maintain public order.

22. Mr. WYSS (Switzerland) explained that legislation provided for various ways for victims of racist attacks to seek redress. Very few such cases were recorded and there was little case law on the subject. Nevertheless, a person who had hurled racist epithets at a police officer in the canton of Zurich had recently been ordered to pay the victim 1,000 Swiss francs.

23. Mr. ROHNER (Switzerland), Head of the Labour Force and Immigration Section of the Federal Office for Foreigners, admitted that the Swiss immigration policy - the "three circle" policy - posed many problems in terms of the Convention, and in his view the Government of the day had not realized its racist implications in practice. He added that, in 1996, 47 per cent of foreigners who had entered Switzerland were nationals of countries in the outer circle.

24. The Government was now concentrating on the speediest possible implementation of a new Foreigners Act, which would replace the existing Act dating back to 1931 and which was based on whether candidates qualified for immigration and not on the country from which they came. Nevertheless, for the time being it was not possible to say for certain that the Government would withdraw its reservation.

25. Once foreigners had been admitted legally to Switzerland, they were treated on a footing of equality in respect of the right to purchase, sell and rent property; the right to change their place of residence or canton; the

right to individual, occupational or geographical mobility; the right to conclude a labour contract or to be covered by a collective agreement; the right to family reunion; access to schools and universities; the right to social security including unemployment benefits; and the right of access to the courts.

26. Mr. DIEFFENBACHER (Switzerland), Head of the Legal Department of the Federal Office for Foreigners, said that, in general, the police had to ensure respect for laws and edicts. They also had to make sure that foreigners had the necessary permits and, in particular, to curb moonlighting. Since police officers needed accurate information to be able to do their duty, they had direct access to the Central Register of Foreigners and the register of the Federal Office for Refugees. There were clear guidelines on electronic access which was confined strictly to the data needed.

27. He emphasized that the Central Register of Foreigners was intended to rationalize the work of the police authorities, ensure that the inspections provided for by law could be carried out, compile statistics on foreigners and, in certain cases, pave the way for administrative assistance. The system was to the advantage of foreigners in that it enabled them to prove their status easily. It went without saying that the police had to respect the rights of the people they checked and to keep to the letter of the law.

28. There were various kinds of residence permit for foreigners: the permit pending asylum procedures; temporary admission permits; seasonal permits; short-term residence permits; annual permits and establishment permits. Over 70 per cent of foreigners had an open-ended establishment permit. He stressed that there were plans to simplify legislation on the various kinds of permits.

29. With regard to detention pending a decision on refugee or asylum status and detention prior to refoulement, foreigners could not be detained simply because they were not in possession of a residence or establishment permit. Persons could be detained if they refused to reveal their identity; submitted various requests for asylum using different identities or failed to answer an official summons on several occasions for no good reason; seriously endangered the life or physical integrity of other persons; or were suspected of trying to elude refoulement. The practices of cantonal authorities were monitored by the Federal Tribunal. He added that, the observations and recommendations of the Committee against Torture had been passed on to the competent authorities.

30. Mr. VOEFFRAY (Switzerland), from the Directorate for Public International Law of the Federal Department of Foreign Affairs, recalled, with regard to the naturalization of young foreigners, that the corresponding draft constitutional amendment had not been endorsed at the federal level since most of the cantons had voted against it, but that all the cantons that had voted in favour of it in 1994 had revised their legislation on naturalization. However, there were plans to revive the draft amendment at the federal level in the spring. Under the amendment, young third-generation foreigners and stateless persons would acquire Swiss nationality at birth and young second-generation foreigners could apply for naturalization earlier than under existing legislation.

31. He explained that in Switzerland people spoke of cultural rather than ethnic minorities. The "people of the road" were considered to be a minority of that nature. The Government had not yet ratified the Framework Convention for the Protection of National Minorities.

32. Traditional minorities, namely, people who spoke Italian and Rhaeto-Romansch, considered themselves to be national and not ethnic minorities. Some 30,000 spoke Rhaeto-Romansch and five different kinds of Rhaeto-Romansch were recorded in the canton of Grisons. It was difficult for such a small linguistic community to keep up the use of their language, especially in the press, without State assistance. He stressed that most of the Romansch were bilingual or even trilingual. The Federal Act on financial assistance to maintain and promote the Rhaeto-Romansch and Italian languages had been amended in 1995 to include additional measures to promote Rhaeto-Romansch. Article 116 of the Constitution had also been amended and Rhaeto-Romansch had been an official language since 1996 and could therefore, be used in connection with all administrative formalities.

33. Switzerland had ratified the European convention on European minority languages in December 1997 and on that occasion, had stated that it intended to protect Rhaeto-Romansch and Italian. The number of Rhaeto-Romansch persons who could work in the civil service was not subject to a quota at the federal level.

34. Mr. de GOUTTES thanked the delegation of Switzerland for the explanations it had provided. It was interesting to see how racism was being curbed in a country like Switzerland where federal institutions, mentioned by way of example in the teaching of constitutional law, had to ensure that local populations, in each canton, had the best possible chance to take part in public life. It had also been interesting to compare the record of a federal country with that of a centralized country. Regardless of the institutional system, racism and xenophobia were urgent problems everywhere and solutions therefore had to be found at both the international and regional levels. The Council of Europe and the European Union had both set up a commission against racism.

35. The CHAIRMAN, speaking in his capacity as a member of the Committee, endorsed that view but noted that solutions should continue to be sought at the national level too.

36. Mr. GARVALOV thanked the delegation of Switzerland for its scrupulous replies to the various questions that had been raised at the previous meeting. He wished to explain that one of his own questions had been based on his belief that the State party had already ratified the European Framework Convention for the Protection of National Minorities, when in fact it was still considering the possibility of doing so. He asked the delegation to forgive his error.

37. For the international community, Switzerland was still a model democratic society and he personally was trying to encourage the Bulgarian people to seek inspiration in the Swiss popular referendum system.

38. He had taken the explanation of Switzerland's integration policy to mean that the Swiss people had scrapped the "national origin" formula in favour of the concept of "ethnic origin", which seemed more suited to the situation in the country. No one could hold that against them because only States themselves could judge what was in their best interest. However, the statistics on page 7 of the initial report of Switzerland showed that almost 300,000 nationals of the former Yugoslavia were permanently resident in Switzerland. Obviously they did not speak any of the languages used in Switzerland but formed a large group of people with a common language. In the circumstances, was there any possibility of them being seen one day as a linguistic minority and recognized as such?

39. Mr. SHAHI said that, in the light of the information given in paragraphs 165 and 133 of the report of Switzerland, he would like to know whether measures were being taken to combat racist propaganda on the Internet. In particular, he wondered whether the dissemination of material in that way was covered by article 26 bis of the Penal Code.

40. Mr. YUTZIS welcomed the fact that Switzerland had realized the shortcomings of the "three circle" system and intended to amend it.

41. He had two more questions for the delegation of Switzerland and hoped that it would be in a position to reply to them in a future report.

42. It was common knowledge that hostile acts, and in particular arson, had been directed at foreign nationals or holding centres. He would like to know what progress had been made with the investigations being carried out, whether any verdicts had been handed down already and how many cases were still pending.

43. The other question related to the act governing labour contracts. The fact that work was not regarded as a right in Switzerland obviously posed a problem in terms of implementing article 5 of the Convention. He asked how the Swiss authorities intended to ensure that the system for granting labour contracts and the principle of equal opportunities were compatible. What exactly were the "public sectors" in which new article 261 bis of the Penal Code "will now make it possible to ensure that the prohibition against racial discrimination is respected"?

44. Mr. HELD (Switzerland) thanked Mr. de Gouttes for his remarks and an analysis that he fully endorsed.

45. Replying to Mr. Garvalov's question on whether nationals of the former Yugoslavia who were resident in Switzerland would eventually be regarded as a national minority, he stressed that it was very difficult to define the concept of "national minority". In Switzerland, the term was usually reserved for minorities possessing the nationality of the State. So his personal interpretation was that it did not appear to apply to nationals of the former Yugoslavia. Besides, they usually wanted to keep their nationality and it was therefore normal that they should come under the policy for the integration of foreigners.

46. For the moment, he was not in a position to answer Mr. Shahi's question on racist propaganda on the Internet but hoped to be able to provide the Committee with details in writing in the near future.

47. With regard to Mr. Yutzis' questions he did not have any factual data on arson attacks against foreigners. Information on that question and on combating discrimination in labour contracts would be provided in Switzerland's subsequent report.

48. Mr. van BOVEN (Country Rapporteur) applauded the spirit of cooperation that had been exhibited by the delegation of Switzerland, which had tried to provide constructive answers to the questions raised.

49. He observed that Switzerland's report was an initial report and that implementation of the Convention was a long-term process that needed to be followed closely and required constant effort. Consideration of the report had no doubt been an instructive exercise for Switzerland which would have realized, like other countries before it, that there was a long way to go and that it was necessary constantly to adapt legislation, take preventive measures, and so forth.

50. Nine main points seemed to have emerged from the discussion. First, many members of the Committee had stressed the question of discrimination in the private sector, which was not being dealt with adequately. Provisions to guarantee respect for equality between men and women were a good beginning but further efforts were needed. Switzerland had provided replies on the implementation of article 4 but not on the application of articles 2 (d) or 5 of the Convention.

51. With regard to the treatment of foreigners, the fact that Switzerland was calling into question the "three circle" system was a step forward but the process had to be speeded up. Several members of the Committee had stressed that the Convention authorized countries to make a distinction between foreigners and their own nationals, but that it did not permit them to make distinctions between different "categories" of foreigners.

52. The third point concerned the role of the police. The efforts made to train law enforcement officials were commendable but it was worrying that the "foreigners' police" apparently wielded extensive powers and was practically beyond any judicial control. The Committee had to remain vigilant in that regard.

53. One further issue that the Committee would continue to follow closely concerned the compensation paid to minorities, particularly the "Jenisch" minority and other nomadic populations such as the Sinti or the Roma. The Committee had welcomed the fact that a special fund had been set up for that purpose.

54. In the same vein, Switzerland should in future provide more details on the practical implementation of articles 4 and 6 of the Convention and, in particular, on cases of discrimination that were before the courts and the kinds of compensation envisaged.

55. One question to which Switzerland had failed to reply concerned participation in the voluntary fund for assistance to victims of racism which was to be created in the framework of the Decade to Combat Racism and Racial Discrimination. Did the Government also intend to strengthen administrative and technical support for the Federal Commission against Racism and subsidize certain institutions or organizations that played an important role in that area at the national level?

56. Having heard the delegation's explanations concerning article 14, he felt that Switzerland would be ready to accept the article and make the corresponding declaration once it was more sure of the Committee's impartiality. Obviously, such confidence would only come with time and experience. The existing procedure under the European Convention on Human Rights could provide an interesting point of reference in that regard but it should be recalled that that Convention's provisions on non-discrimination were very limited.

57. Finally, the members of the Committee hoped that the provisions of the Swiss Penal Code, and article 261 bis in particular, would be applied more systematically to punish acts intended to deny, minimize or justify genocide or other crimes against humanity.

58. Since implementation of the Convention was a matter for all segments of society without exception, Switzerland should publish and widely disseminate its report and the Committee's conclusions.

59. The CHAIRMAN, speaking in his capacity as a member of the Committee, wholeheartedly endorsed Mr. van Boven's remarks on the distinction made in Switzerland between various "categories" of foreigners. He himself had had an unfortunate experience at Geneva airport where the time it took to pass through passport control varied enormously according to whether a person was from a European country or another foreign country.

60. In conclusion, he thanked the delegation of Switzerland for its exemplary cooperation and the quality of its oral explanations.

61. The delegation of Switzerland withdrew.

The meeting was suspended at 12.10 p.m. and resumed at 12.20 p.m.

Review of the implementation of the Convention in the Congo

62. Mrs. SADIO ALI (Country Rapporteur), recalling that the Congo had not submitted a report to the Committee on its implementation of the Convention, made a general presentation using geographical, economic, political, demographic and ethnic data concerning the Congo.

63. The population of the Congo, which had been put at 2.5 million inhabitants in 1994, was made up of several large ethnic groups: the Vili, the Kongo, the Teke, the Kikongo, the Sangha, the Bakongo and the M'boshi. French was the official language and the main vernaculars were Teke, Monokituba and Lingala.

64. Since the Pygmies were usually dependent on dominant Bantu groups, she said it would be interesting to know whether any specific action had been taken to protect their rights.

65. The Congo was experiencing rapid urban growth accompanied by a pronounced exodus from rural areas, which made it difficult to supply towns with food and led to a steady increase in agricultural imports. The country depended to a great extent on proceeds from petroleum production, the level of which had made it impossible for the Government to pay the salaries of civil servants on a regular basis and provide scholarships in recent years, thereby fuelling protests by trade unions. The Congo's recent political history had, since 1992, been characterized by extreme instability. Since 1992, when the Constitution had been revised for the sixth time and Marxism-Leninism abandoned as the official ideology, the Congo had been racked by numerous clashes between various political factions that had been created along largely ethnic lines. The election by universal suffrage in August 1992 of Pascal Lissouba, successor to General Sassou Nguesso, had failed to bring about a peaceful solution to the conflicts between politico-ethnic groups. After the first outbreak of civil war in 1993 between armed militia that were linked to those groups and a bloody four-month war, General Sassou Nguesso returned to power by force at the end of 1997, with the help of Angolan forces.

66. The Security Council had condemned all foreign intervention in the Republic of the Congo, although it had been unable to decide on a firm plan of action to restore peace and stability in the country.

67. In view of the general situation in the Congo, it was difficult to say how the International Convention on the Elimination of All Forms of Racial Discrimination was being implemented there.

68. The CHAIRMAN said that consideration of the implementation of the Convention in the Congo was confusing for the Committee. Without a report or information from the Congolese authorities, the Committee could only really rely on the core document that the State party had submitted to the United Nations Secretariat. Unfortunately, the document was now of doubtful value given the chaotic situation on the ground. Furthermore, the Committee's secretariat had been unable to contact a diplomatic representative of the State party in Geneva. In the circumstances, the Committee was loath to examine the State party report and could only really draw the attention of the General Assembly to the situation in the Congo.

69. Mr. SHAHI read out an article from the Dawn/Interpress Service on the meetings held at the beginning of January in Brazzaville (Congo) by the National Forum for Reconciliation, Unity, Democracy and Reconstruction (FNRUDR). According to the article by Mrs. Rosine Ngangoue, FNRUDR accused the former deposed President, Pascal Lissouba, and his Prime Minister, Bernard Kolélas, of genocide against the Lari-Kongo and the Bangala during the internal armed conflict in 1993 and 1997. FNRUDR also accused Parliament as a whole, and in particular Mr. Poignet, former President of the Senate, and the former President of the Assembly, Mr. Milongo, of being accomplices to genocide. The accusers demanded that they should answer for the crimes they were accused of committing.

70. The article did, however, state that FNRUDR had been organized on the initiative of Mr. Sassou Nguesso, the Congo's new de facto President. It also mentioned that, in its final report, FNRUDR had recommended that the case should be taken to an international court, such as the International Criminal Court or the Commission on Human Rights, so that they could determine who was responsible for genocide and crimes against humanity and punish the guilty parties. Furthermore, it stated that some people spoke as if Pascal Lissouba and his supporters had been the only ones responsible for the violence during the civil war that had brought two warring parties head-to-head.

71. He added that the Committee should, in its report to the General Assembly, express its deep concern at the serious human rights violations in the Congo and that the Chairman of the Committee had asked the Chairman of the Commission on Human Rights how the latter intended to deal with the situation in the Congo.

72. The CHAIRMAN said that reports of serious and systematic human rights violations, even genocide, in the Congo were extremely worrying. However, since the Committee was unable to verify the accuracy of those reports, Mrs. Sadiq Ali should continue monitoring the situation. He suggested that the Committee should wait until its next session before formulating the observations it would submit to the General Assembly.

73. It would also be useful to invite the new High Commissioner for Human Rights, Mrs. Robinson, to a working meeting at which views could be exchanged.

74. Mr. GARVALOV endorsed the Chairman's suggestions concerning consideration of the situation in the Congo and suggested that it should be discussed with the High Commissioner at the proposed meeting.

75. The CHAIRMAN felt it would be better to confine the meeting with Mrs. Robinson just to general questions of interest to the Committee. Matters concerning the Congo could be broached at a later date at another meeting.

76. Mr. de GOUTTES agreed that, in view of the seriousness of the information presented on the situation in the Congo, Mrs. Sadiq Ali should continue monitoring the situation there and that the Committee should resume its consideration of the matter at its next session in August in the light of the decision taken by the Commission on Human Rights and information that it had managed to obtain. He fully endorsed the Chairman's proposal for a working meeting with the High Commissioner for Human Rights that focused on general issues.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (agenda item 6)

Consideration of the situation in Papua New Guinea

77. Mr. GARVALOV (Country Rapporteur) said that the Committee had received no information from Papua New Guinea since it had last considered the situation there in August 1997. The State party had submitted an initial report (CERD/C/100/Add.4) which the Committee had considered in 1984 and re-examined in 1992, 1993, 1994 and 1997, but since then had disregarded the

Committee's repeated requests that it should submit periodic reports and provide additional information in accordance with article 9, paragraph 1, of the Convention.

78. In view of the State party's failure to comply with its obligations under that article, the Committee should reiterate its decision 4 (51) on Papua New Guinea that had been adopted on 21 August 1997 (A/52/18, chap. II). Since the situation had been dragging on for several years, the Committee could inform Papua New Guinea of its decision through the High Commissioner for Human Rights.

79. Mr. BANTON added that Papua New Guinea would have a hard time convincing anyone that it was experiencing technical difficulties in compiling reports since one of its public officials had been trained how to do so through the advisory services of the United Nations.

80. The CHAIRMAN said that he took it that the Committee endorsed Mr. Garvalov's observations and proposed that he should be asked to draw up a draft decision on the situation in Papua New Guinea with regard to the submission of reports.

81. It was so decided.

The meeting rose at 12.55 p.m.



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the Elimination
of all Forms of
Racial Discrimination**

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Fifty-second session

SUMMARY RECORD OF THE 1250th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 4 March 1998, at 3 p.m.

Chairman: Mr. ABOUL-NASR

later: Mr. DIACONU

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Seventh, eighth and ninth periodic reports of Israel (CERD/C/294/Add.1)

1. At the invitation of the Chairman, Mr. Sabel, Mr. Zaken, Mr. Galilee and Ms. Ronen (Israel) took places at the Committee table.

2. Mr. SABEL (Israel), introducing the consolidated seventh, eighth and ninth periodic reports of Israel (CERD/C/294/Add.1), said that Israel had become a party to the Convention of its own volition and had thus voluntarily undertaken to accept the Committee's monitoring. Israel, with its heterogeneous society, inevitably had its internal tensions and problems. They were presented frankly, and searching questions were expected. In the whole of the Middle East, however, it was the only State against which early warning or emergency procedures had been initiated by the Committee, which was surely cause for puzzlement. Some of the questions it had been asked raised serious doubts as to whether it was receiving fair and equal treatment - for example, whether Arabs in Israel regarded the State flag as a barrier between races. Had that question been asked of any other State? Had those States which flew the sign of the crescent been asked to explain their flag? Why had only Israel been asked to explain the relevance of the Bible's rules to its society, when the Bible was sacred to Christianity, revered by Islam and the cornerstone of European civilization? The State was further being asked to comment on statements made by clearly deranged individuals as if they were proclamations of State policy.

3. The CHAIRMAN said that the Committee treated all countries on an equal basis, and he would not allow anyone to question its credibility or that of its previous Chairmen, all of whom had conducted their work impartially. If the delegation had any criticism to make, it should indicate to whom and to what occasion it was referring. He did not think Israel had ever been treated differently from other States Parties, and when it had last come before the Committee, it had been praised for its cooperation. He hoped that cooperation would continue.

4. Mr. SABEL (Israel), recalling Israel's position with regard to the applicability of the Convention to territories under Israeli military administration, said that, as the Convention did not explicitly address the issue of territorial applicability, and article 29 of the Vienna Convention on the Law of Treaties stated that a treaty was binding on each party in respect of its entire territory, it could be presumed that the treaty was not binding beyond the national territory of the State party to it, and accordingly, Israel's obligations under the Convention, including the obligation to report on its implementation, did not appear to extend to territories under military administration which were not part of its territory.

5. There were, moreover, substantive reasons why the implementation of the Convention in the territories should remain outside the scope of the report and its consideration. A sea change had taken place in the area. Over 95 per cent of the Palestinian population in the West Bank and the Gaza Strip

now had self-government under the Palestinian Self-Governing Authority, which had legislative, administrative and judicial powers. There was a Palestinian police force and Palestinian courts administered Palestinian law. The Israeli military administration no longer administered the life of the Palestinian population. The final status of those territories was to be settled by negotiations between Israel and the Palestinian authorities. Israel, not only legally but for very practical reasons, was not in a position to report on cases of discrimination in the territories. It was not in a position to enforce any compliance with human rights norms in the territories and was therefore unable to brief the Committee on the situation.

6. Under article XIX of the 1995 Interim Agreement, Israel and the Palestinian Council were required to exercise their powers with due regard for internationally accepted norms and principles of human rights and the rule of law. Israel was, in fact, extremely concerned about certain Palestinian discriminatory practices, such as a 1997 political and legal campaign of incitement and advocacy of violent action against persons selling real estate to Israeli citizens, for the racially discriminating reason that the purchasers were Jews and Israelis. The abductions and murders in May 1997 of Palestinians who had been involved in such transactions had been given public justification by high-ranking Palestinian officials. The circumstances of the incitement and subsequent abductions and murders were flagrant violations of human rights and of civilized norms. Such incitement and licence for violence were incorporated into a proposed discriminatory Palestinian law on foreign ownership of real estate, which specifically excluded Israeli citizens. It would be very strange if Israel were to be held accountable for acts of the Palestinian Council aimed specifically at discriminating against Israel and its citizens.

7. Turning to the report and issues raised by members of the Committee, he said that Israel's character as a State of the Jewish people stood on an equal footing with its character as a democracy, with the obligation to accord all its citizens equal rights, and to prohibit racism. Thus the same provisions of the Basic Law concerning the Knesset which allowed disqualification for rejection of the existence of Israel as the State of the Jewish people also provided for disqualification of a list of candidates for Knesset elections if its platform showed clearly that it was racist or anti-democratic. It was on that basis that the Court had upheld the disqualification of the Kach party, the party of Kahana. He could confirm that a political party which advocated that Israel be designated as "The State of all its citizens" had participated in Israeli elections.

8. With regard to Israel's law of return, the right of every Jew to come and live in Israel was an integral part of the country's credo and raison d'être. Israel remembered well the lessons of the Second World War. The law of return had been promulgated to ensure that those Jews wishing to come to Israel would have an absolute right to do so. The law did not make all Jews all over the world into Israeli nationals, but granted them the right to become Israeli nationals should they so wish. The rights of an immigrant under that law were granted to all members of an eligible person's family, whether or not such relatives were themselves Jewish. In addition, a new immigrant could opt out of Israeli citizenship but retain the status of resident.

9. There was also the 1952 Nationality Law, which stipulated that citizenship could be acquired by birth, residence, a combination of birth and residence, naturalization or grant of nationality. All persons born in Israel, regardless of religion or ethnicity, were automatically citizens and enjoyed the rights deriving from citizenship, including the right to vote and be elected and the right to hold public office. All Arabs born in Israel or to Israeli nationals outside Israel acquired Israeli nationality by birth without any special formalities or requirements.

10. Israel had declared its willingness to negotiate on the issue of Arab refugees and their property, as reflected in its agreement with the Palestine Liberation Organization (PLO) and in the peace treaty with Jordan. Some 800,000 Jewish refugees had fled Arab States, leaving all their possessions behind. In all negotiations, the issue of the property of those Jewish refugees and compensation for their property had to be taken into consideration.

11. He quoted the statement by Chief Justice Barak in the Poraz case, reproduced in paragraph 21 of the report, on the importance of equality as a basic norm of democratic society. That statement epitomized Israeli society. While Israel had initially emphasized preventing public discrimination, it was now also, as set out in detail in the report, outlawing discrimination by individuals and placing increased emphasis on affirmative action. With regard to the sums spent by the Government, the present exchange rate was approximately NIS 3.6 to the United States dollar.

12. The authorities had undertaken an active policy of prosecution of all forms of racism, as evidenced by the recent conviction of Ms. Tatiana Suskin, who had drawn a poster defaming Islam. A major development in applying to individuals the rule against discrimination had been the 1995 amendment to the Equal Opportunities in Employment Act, which now included a prohibition of discrimination on grounds of national ethnic origin, country of origin, beliefs, political view, political party affiliation or age. The Law also prohibited discriminatory recruitment conditions. The amended law had thus extended to private persons and private transactions the previously existing prohibitions against discrimination in employment by public bodies.

13. The State of Israel had not been involved in any way in the erection of a shrine to Dr. Goldstein, who had murdered Palestinians at the Tomb of the Patriarchs in Hebron. People in Israel regarded him as a criminal. He was buried in a private cemetery, with no memorial other than the gravestone. The restoration of the Western Wall tunnel in Jerusalem had been undertaken to reveal archaeological finds and improve the tourism infrastructure in the Old City. It was a major contribution to the study of urban society in the time of the Muslim reign, and in any event the tunnel did not run under the Temple Mount. No archaeological or religious sites had been damaged in its construction, nor did its restoration endanger any buildings or other structures in the Old City.

14. Separate Jewish, Christian, Muslim and Armenian quarters had existed in Jerusalem for centuries, as was the custom in many Middle Eastern cities. The different communities tended to congregate around their respective holy places and also had their own customs, shops and meeting places. Israeli society saw

it as its function to ensure the coexistence of the different communities rather than abolish their separate identities. Many cities throughout the world had suburbs and quarters with a predominant population of one community or another, such as New York's Little Italy.

15. As to the residence status of Arabs living in Jerusalem, the overwhelming majority of whom were permanent residents, they could opt to become citizens, but most had not done so. So long as a person continued to live in Jerusalem, he or she could not be deprived of the right to permanent residence. A person who left Israel and did not return, even for a short visit, over a period of seven years, was deemed to have changed domicile. While payment of local taxes might provide an indication of residence, non-payment of taxes in itself did not constitute grounds for revocation of residence. The Arab population in Jerusalem continued to grow, both in absolute terms and in proportion to the city's Jewish population; from 26 per cent of the city's population in 1967, it now represented 30 per cent. And whereas the Jewish population had grown by 11 per cent since 1990, the Arab population had increased 24 per cent.

16. The claim that Israel only supported the research of Jewish sites had no basis in reality. There was complete pluralistic scientific freedom in that field, as witnessed by the variety of researchers from Israel and abroad and of sites involved. He cited the study and preservation of sites from the Mameluk, Muslim, early Christian and Crusader periods of Jerusalem and of Armenian and Byzantine chapels uncovered during road construction in the city, which had been excavated with great care and were being protected in full cooperation with the Armenian Patriarch. Leading antiquities inspectors and archaeological commissioners were from the Greek Orthodox, Muslim Arab and Druze communities. Accusations concerning archaeology were therefore strange to hear, as that was one area in which the Government enjoyed excellent ecumenical relations.

17. Out of some 2 million workers in Israel in 1996, about 95,000 had been legally employed foreigners, and there were now an estimated 100,000 illegal foreign workers, accounting altogether for about 10 per cent of the country's total workforce. Steps were being taken to address the legal and practical aspects of that problem. However, the law did not discriminate between foreign workers and resident Israeli workers. The Equal Employment Opportunity Law of 1988 expressly prohibited discrimination on the basis of nationality or land of origin in regard to granting work opportunities and determining conditions of work, and the rights guaranteed by the labour laws applied to all workers irrespective of their citizenship. Educational, welfare and health services were provided without distinction, and all workers were covered for work accidents, maternity and childbirth. Legal foreign workers were entitled to additional benefits, while illegal workers were entitled to emergency services only. The Foreign Employees (Unlawful Employment) Law 1991 set out criminal prohibitions on employers and employment agencies with respect to employment or detention of workers.

18. A pending bill was designed to compel employers to provide proper living conditions for their foreign workers, to issue all foreign workers with a copy of their employment contract in a language they understood and to provide health insurance. The bill was exceptional in that it imposed direct duties

on the employer by means of legislation. The measure stemmed from the fact that foreign workers, many of whom entered as tourists and remained illegally, were more vulnerable to exploitation. The Government was doing its best to deal on the one hand with the need to reduce the number of foreign workers, especially illegal workers, and on the other to protect them. An administrative authority had been created in 1996 to help solve problems that had arisen.

19. As to compulsory military service for Israeli Arabs, it would create obvious dilemmas, since they might find themselves in conflicts with Arabs from neighbouring countries. On the other hand, by not serving in the army, they were not participating in what was a very important aspect of the Israeli social fabric. As a compromise - albeit an imperfect one - they were therefore exempted from such service and encouraged to engage in voluntary military service. Since 1957, at the request of their community leaders, Israel Defence Force service had been mandatory for Druze and Circassian men, and the number of Bedouin joining the career army was increasing steadily.

20. Until the previous year, the families of people who had served in the army had received a higher children's allowance than those who had not served. As that had been regarded as discriminatory, the distinction had been abolished. The only remaining difference was that individuals serving three years in the army received a cash grant upon completion of service, amounting to some \$200, while those who did not serve could either study or engage in gainful employment, giving them a scholastic, training or financial advantage.

21. Mr. Diaconu took the Chair.

22. Mr. ZAKEN (Israel), speaking as Adviser to the Prime Minister on Arab Affairs, a post which indicated the importance attached by the Government to relations between the communities, said that the Government had an affirmative action policy with regard to the non-Jewish sector of the population. One example of that policy was the Civil Service's practice of setting aside posts to be filled by Arab college graduates. In December 1997, the Civil Service Commission had announced 54 additional positions for Arab graduates exclusively. Other posts in the Civil Service were open to the public at large, with no differentiation between Jews and Arabs.

23. The Government was preparing plans and project outlines for 34 non-Jewish localities in the north of the country. They were designed to solve fundamental problems in the areas of planning, development, industry and planning, and testified to the Government's policy of narrowing gaps in the area of master planning. Since 1991, 36 per cent of the Arab localities had submitted plans which had been approved, as against only 28 per cent in the Jewish sector.

24. New initiatives had been introduced to improve contact and coordination between localities and government ministries. They included visits to non-Jewish areas by senior officials and district directors and the establishment of an inter-ministerial committee comprising advisers for Arab affairs and senior referees to the non-Jewish sector in the various government ministries.

25. The role of Adviser on Arab Affairs included dealing with issues related to discrimination in employment. In May 1997, an investigation into a branch of Israel's largest telephone company had been able to solve the problem of a refusal to hire Arab candidates on the ground that they had not served in the Israeli army.

26. The Office was also actively involved in trying to find conciliatory arrangements in cases of disputes between the local non-Jewish population and the State authorities and in cases of conflicts that had an ethnic/religious dimension. Such arrangements had been secured in a dispute in Tubia-Zangria and in a conflict between Muslim and Christian residents in Tur'an.

27. Local authority budgets were given in the form of a "balance grant", which constituted a balance between the income and expenditure of the local authorities. A special three-year supplement had been granted to Arab localities in the current year. For various reasons, many regional Arab councils had organizational and administrative problems. One of the difficulties they often faced was the low rate of collection of municipal taxes, which affected the council's budget and thus the balance grant from the Ministry of the Interior. A further problem in the non-Jewish sector was the multiplicity of rotation agreements in the local councils, which affected the accumulated deficit that council leaders then left to their successors. In order to assist Arab localities, the Ministry of Interior had maintained the levels of their balance grant and there had been a 40 per cent increase in the annual development budget, even though the State budget had been cut drastically. The Government ministries' investment in development budgets for the non-Jewish sector had reached NIS 432.4 million in 1996 and investments had totalled NIS 503.9 million in 1997.

28. Despite the fact that the proportion of Israeli Arabs in the student population was approximately 20 per cent, their share of the Ministry of Education's development budget exceeded 30 per cent. Between 150 and 170 classrooms were added each year. One hundred localities, 39 per cent of them in the Arab sector - which accounted for 18 per cent of the population - were benefiting from the programme implemented under the Long School Day and Enrichment Studies Law which had been in effect since January 1998.

29. The "Netivei Hagalil" highway construction company was involved in infrastructure development and road paving in Arab localities, under the auspices of the Ministry of Transport. It operated only in Arab areas and had succeeded in improving roads and pavements in non-Jewish areas. The Ministry of Communications was working, through legislation, to approve specific Arabic broadcasting channels.

30. Israel was promoting a "computer for every child" project which was targeted at children from underprivileged homes. The project had been launched first in Arab cities and it was estimated that, over five years, the project would provide computers for approximately 20,000 Arab children.

31. Mr. BANTON (Country Rapporteur) said that Israel should make every effort to engage in regular dialogue with the Committee in accordance with the

reporting cycle provided for under article 9 of the Convention, in view of the numerous problems involved in the application of the Convention to the circumstances in Israel and the occupied territories.

32. In order to save time and give Israel the opportunity fully to prepare itself for the debate with the Committee, he had prepared comments and questions for the State party (CERD/C/52/Misc.8/Rev.1) which the Secretariat had sent to the Permanent Mission of Israel, subject to three conditions. However, maybe due to a breakdown in communication, the delegation of Israel had replied to some of the issues covered in the document before the questions had been asked formally in the meeting, which had not been the purpose of the exercise. The observations made by Mr. Zaken, helpful as they had been, should have been included in the ninth periodic report, which would have left more time for dialogue between the Committee and the State party.

33. Paragraphs 2 to 4 of article 1 of the Convention listed exceptions to the definition of racial discrimination. There was no exception for words or actions that were motivated by religious belief. That observation was relevant in the case of Israel in ways that would not be relevant in many States.

34. He asked whether Arab Israelis regarded the State flag, the anthem and official State holidays as forms of barriers between races. If that was the case, how widespread was that feeling and was the Government aware that that was so? Another potential barrier was the fact that Arab citizens were not subject to compulsory military service. Did the Government encourage Bedouin and other Arab citizens to serve in the army voluntarily and was that part of any policy for the integration of non-Jewish citizens?

35. He wondered whether there was any reason to believe that the issue of building permits in Jerusalem was handled without discrimination.

36. In respect of article 4 of the Convention, he had made no statement concerning a shrine for Baruch Goldstein.

37. There were many questions regarding the conduct of soldiers and officials and how they were governed by military regulations. He had observed that their conduct could be influenced by religious law.

38. Did the 1985 amendment to the Basic Law mean that a political party which expressly aimed at equality for Jewish and Arab citizens would be unable to nominate candidates for the Knesset?

39. The Committee would welcome information on why "nationality" should be recorded on identification cards. It would also like to know why there were grounds for uncertainty as to whether the right of Palestinians to return to their lands came within the Convention.

40. The next periodic report of Israel should provide full details of whether Arab and Jewish women were equally protected by the State against violence in marriage.

41. Future reports submitted by Israel should provide information on actions taken by the Government to prevent racist propaganda from being disseminated on the Internet.

42. With regard to article 5 of the Convention, the organization B'tselem had alleged that the security forces in Hebron had forced Palestinian women between the ages of 17 and 19 to strip in front of other people. It was doubtful that the security forces would have treated Jewish women in the same way.

43. Prisoners exposed to the risk of torture were disproportionately of Arab ethnic origin. Although that matter was within the competence of the Committee, it should take no further action until the Committee against Torture had completed its investigations of the situation. Research indicated that a person of Arab origin charged with a crime, with no previous criminal record, was twice as likely to be convicted than a Jewish person in the same situation, and that sentences for Arab offenders were harsher.

44. Paragraph 19 of the report mentioned the case of Burkan v. Minister of Finance. Further information on that case and its implications in terms of racial discrimination should be provided.

45. The report did not mention any cases in which Israeli courts had accepted claims of racial discrimination and upheld the equal rights of the Arab minority. It had, however, gone into great detail on the Re'em case to illustrate the approach of the Supreme Court to the equal rights of Arabs. The Legal Centre for Arab Minority Rights in Israel (ADALAH) suggested, however, that the case re-emphasized the indifference of the courts to the group rights of the Arab minority in Israel.

46. He asked whether army service was misused as a criterion for employment or the provision of a service, who was responsible for protecting the interests of the excluded group and how often action had been taken.

47. In view of the difficulties encountered in terms of what was meant by indirect discrimination, the Committee should consider expanding General Recommendation XIV (42) by adding the following wording:

"In considering whether a differentiation of treatment constitutes discrimination in effect, the Committee will (a) examine differentiations ostensibly based on grounds other than those listed in article 1.1 to see whether they have significant effects on the rights to be protected under the Convention; and (b) exclude any differentiation which can be justified on grounds of the inherent requirements of the position."

48. The delegation should comment on the case of Mr. Kaadan, of Arab origin, who had wanted to join a cooperative in Katsir.

49. He asked whether there was reason to believe that the Equal Opportunity in Employment Act was effectively enforced for Israeli citizens and for

non-citizens. Information was also needed on whether educational expenditure on the different communities within Israel was proportionate to the number of children of school age in those communities.

50. Referring to the right to equal participation in cultural activities, he asked whether the next report could describe measures which ensured that the antiquities policy was non-discriminatory.

51. On article 6, he pointed out that the Committee regularly asked States for details of reparations so as to be able to assess whether they were effective. Could the Committee have that information? Did the Public Complaints Commissioner report to the Knesset, and if so, to what effect?

52. Turning to the occupied territories, if the Israeli Government was unwilling in its periodic reports to cover implementation of the Convention in the occupied territories, did that not make it appropriate for the Committee to consider such questions under its procedure for the prevention of racial discrimination?

53. As to housing in the occupied territories, he pointed out that in order for Israel to be in compliance with the Convention, new housing must be made available to all would-be tenants or purchasers irrespective of ethnic origin.

54. Did not the application of residence requirements to Arabs in effect constitute discrimination?

55. Was there any discrimination in the access to highways for motorists?

56. The Arab Association for Human Rights had reported to the Committee on the many problems of unequal treatment in connection with what were called "unrecognized villages". There were no "unrecognized" Jewish villages, only Arab ones. Could the Israeli delegation comment?

57. According to the Palestinian Society on the Protection of Human Rights and the Environment, the military courts were in violation of the Fourth Geneva Convention and the rights set out in article 14 of the International Covenant on Civil and Political Rights. One of the cases cited had concerned four members of an undercover unit of the Israeli defence forces who in November 1996 had each been fined one agora, less than one US cent, for negligently causing the death in 1993 of Iyad Amali, a passenger in a car which had been stopped at a checkpoint.

58. Mr. ABDEL-NASR said that the Committee had had a very constructive exchange of views with the Ambassador of Israel at the previous session. Today, Mr. Sabel had addressed the Committee in a very aggressive manner, accusing it of statements which it had not even made.

59. First of all, what did the Israeli delegation mean by saying, at the beginning of its statement, that it had become a party to the Convention of its own volition? Did it think that other States parties had been forced to accede to that instrument? Did it believe that Israel was unique in having acceded to the Convention of its own will? The Israeli head of delegation had

suggested that it was being discriminated against and treated unfairly. Such an attitude was not at all conducive to promoting understanding in the region.

60. Much of what Mr. Sabel had said was untrue. For example, he called Israelis who had criticized the Government deranged. The Israeli Government would have done well to listen to some of the statements of the wife of the former Prime Minister.

61. With regard to the issue of the erection of a shrine to Mr. Goldstein, to which the delegation had referred, could Mr. Sabel tell the Committee what was written on that shrine and whether he considered it racist?

62. Whenever Israel made a statement, it invariably stressed that it was the only democracy surrounded by dictatorships. That was reminiscent of Israel's attitude that it was always under attack, and of its earlier statement that it had acceded to the Convention of its own volition. Israel was not the only democracy in the region; in fact, many examples could be cited to show that it was not a democracy at all. Mention had been made of the right of return. That law contained not only a humanitarian, but also a racist element. If Russian Jews were granted Israeli nationality as soon as they set foot in Israel, whereas Arabs, Muslims or Christians were refused the right to return to their own countries to reclaim their houses or farms, it was because they belonged to a different ethnic or religious group. Was that possible in a democracy? Was it democratic to deny Palestinians the right to use certain roads? Why were they not allowed to use route 60?

63. The Israeli delegation had referred to Chief Justice Barak. Was he the same judge who had ruled that the torture of Palestinians was legal? Could the Committee have a copy of the decision by the court, issued on 15 November 1996, allowing Palestinians to be shaken so roughly that death could ensue? It was likewise difficult to see what was democratic about the daily bulldozing of Palestinian homes or the construction of a dozen new settlements in the Jerusalem area for Jews only.

64. Could the Israeli delegation inform the Committee how many Palestinians were detained in Israeli prisons without trial and for how many years? How many were women? How did that square with the principles of democracy?

65. The Israeli delegation had referred to Jerusalem as though it all belonged to Israel. That was not the opinion of the international community, which would never accept the annexation of East Jerusalem. What were Israel's borders? It occupied part of the territories of a number of neighbouring States: Lebanon, the Golan Heights, the West Bank and East Jerusalem, presumably all in the name of democracy.

66. There must be a way to accommodate the right to security and the right to peace, both of which were important and valid. The best approach was one based on mutual respect, not on claims to be the only democracy. The Committee raised criticisms about the situation in the country of every delegation that appeared before it; the Israeli delegation should not feel that it was being singled out.

67. Mr. RECHETOV was pleased that the Committee was developing a useful dialogue with the Israeli Government. Israel's future would depend on how the problem of relations between the Jewish and Arab parts of the population was resolved. He agreed with Mr. Banton that it would be necessary for Israel to decide which element was more important, the democratic or the ethnic one.

68. Turning to the ninth report, he was struck by a remark towards the end of paragraph 27 on the "need for tolerance towards the speaker of a foreign language". What foreign language was that? If it was Arabic, then the assertion at the beginning of paragraph 27 that Arabic was "an official language of the State" was clearly meaningless. He also sought clarification on the statement in the middle of that same paragraph that "one should not obstruct the progress of someone who wishes to legally advance the exclusive imposition of the Hebrew language in our lives", which to his mind was an understanding of freedom of speech that was so broad as to be inconsistent with the Convention, for such a goal could only be achieved by prohibiting others from speaking their own mother tongue.

69. The section of the ninth report beginning with paragraph 33 was entitled "affirmative action", which was misleading, because it did not describe measures to assist Ethiopians per se, but only Ethiopian Jews. That the Israeli Government took a variety of steps to help Jewish immigrants from all countries was common knowledge.

70. With regard to paragraph 50, he sought further clarification on how the "external security situation" could have an adverse effect on the socio-economic conditions of the Arab population.

71. Paragraph 55 stated that the Arab school system used Arabic as the language of instruction, as did teacher-training colleges associated with the Arab school system, whereas universities, post-secondary level colleges and specialized technical schools were fully integrated. Did that mean that at university level, the only language used was Hebrew, to the detriment of Arabic?

72. What was the current Israeli policy with regard to former Soviet citizens who wanted to have dual Israeli-Russian citizenship? He had read in the press that certain influential persons in the Russian Federation had Israeli citizenship as well. Had Israeli practice changed to allow Russian immigrants to have dual citizenship, or was that an exception granted only to wealthy individuals?

73. In closing, he assured the Israeli delegation that the Committee put the same kinds of questions to all State parties which appeared before it and that it looked forward to continued constructive dialogue with Israel in a spirit of goodwill.

74. Mr. de GOUTTES said that he had the impression that with the arrival of the Israeli delegation in the Committee, the atmosphere had become more charged and tense. It was up to everyone present to maintain a spirit of dialogue and objectivity. Like other members, he had been somewhat surprised

by the tone in which the Israeli delegation had begun its oral presentation, apparently accusing the Committee of treating it more harshly than others. That was unfounded.

75. Concerning the occupied territories, Mr. Sabel had asserted that Israel was no longer in a position to ensure that human rights were protected there, that Palestinian law was now in force in the occupied territories, and that Israel considered that the Convention was not applicable there. That statement was inconsistent with the opinion expressed in the Committee's decision 1 (51), adopted at its 1236th meeting on 18 August 1997.

76. Paragraphs 50 et seq. of the report contained a frank acknowledgement of the gap between the Jewish majority and the Arab minority in terms of living standards and involvement in national affairs, with corroborative statistics on life expectancy, schooling and judicial convictions. He was surprised by the statement that the discrepancy was partly attributable to the fact that Arabs were not conscripted and hence were denied involvement in a vital element of Israeli society. Was he justified in drawing the inference that the armed forces played a vital role in social promotion?

77. A somewhat idyllic picture was presented of Arab advancement policies in education, health, housing, culture, sport and social protection. The Committee generally based its assessment of the circumstances and degree of integration of minorities on such socio-economic indicators as school enrolment ratios, employment rates, access to public service and social services, crime and imprisonment statistics and mortality and morbidity ratios. What special measures of affirmative action had been taken to bridge the gap between the majority and minority communities? How many Arabs worked in ministries or held high-ranking posts in the civil service?

78. Had action been taken to compensate Arabs who had been expropriated or whose homes had been destroyed? Was it true that Arabs in the occupied territories were subject to special legislation and military courts which, according to Amnesty International's latest report, failed to respect international norms and minimum standards for a fair trial?

79. He requested statistics on complaints, legal proceedings and sentences relating to acts of racial or ethnic discrimination and decisions regarding reparations or compensation on behalf of the victims of such acts, primarily Arab victims but also Israelis.

80. While the information on Supreme Court decisions provided in paragraphs 14 et seq. was useful and significant, the Committee would appreciate more information on the attitude of the police authorities and the Attorney-General's Office and on decisions of courts of first instance in cases of racial discrimination.

81. Mr. van BOVEN said he was somewhat surprised that the delegation had been provided with the Country Rapporteur's questions in advance. That was not the Committee's normal practice and it placed the delegation in a privileged position. He regretted that the Committee had not received either the report or relevant NGO material in time to give them the in-depth consideration they deserved.

82. He associated himself fully with the comments of the Country Rapporteur. He feared that any exchange on the issue of the applicability of international treaties to the occupied territories would yet again prove to be a dialogue of the deaf. As Israel had refused for over 30 years to recognize the applicability of the 1949 Geneva Convention and various human rights instruments to the occupied territories, he wondered about the degree of international accountability for a situation which placed the population concerned in very vulnerable circumstances. The Committee disagreed with the delegation's argument that treaties were not binding beyond a country's territorial jurisdiction. There was a strong parallel in a recent judgement by the European Court of Human Rights, which had found against Turkey in a case brought by a Greek-Cypriot owner of immovable property in northern Cyprus concerning violation of the European Convention on Human Rights by the Turkish armed forces. Turkey's argument that it had no jurisdiction in northern Cyprus had been dismissed by the Court. The prevailing human rights doctrine was that a State was responsible for actions in a territory under its control. In the case now under consideration, it had been argued that the situation was under the control of the Palestinian Authority but, regardless of the validity or otherwise of that argument, it failed to address the issue of the Jewish settlements in the occupied territories. The status of the settlements was clearly inconsistent with article 3 of the Convention which, as noted in the Committee's General Recommendation XIX, prohibited all forms of racial segregation in all countries. There was a consensus among publicists that the prohibition of racial discrimination, irrespective of territories, was an imperative norm of international law.

83. Referring to paragraph 16 of the report, he asked whether it was true that the Kach and Kahana Chai terrorist organizations still existed, perhaps under another name. The Committee would appreciate further information on action taken against such organizations.

84. He was unhappy with the structure of the report. Did the section under the heading "affirmative action" include all paragraphs from 33 to 100?

85. Observing that the Committee had taken up the issue of anti-Semitism in its dealings with many States parties, he stressed the relevance of the Convention to victimized and disadvantaged non-Jewish groups in Israel and the occupied territories. Referring to NGO material on housing and settlement rights, he inquired about the status of some 60,000 Arabs living in villages that were not officially recognized or shown on maps. Was it true that all structures in those communities were viewed as illegal buildings subject to demolition? What was being done to resolve the issue in a just and equitable manner? Some 110,000 Arab Bedouin lived in 43 recognized and unrecognized settlements in the Negev Desert. Was it true that the authorities had removed some of the Bedouin from their traditional lands and forced them into Government-planned townships that were incompatible with their customs and lifestyles?

86. Some of the roughly 200,000 Palestinians displaced within Israel since the events of 1948 had sought to recover their property but most requests had been rejected by the Supreme Court. What type of compensation had they received and had they been offered alternative housing and settlement facilities?

87. Mr. LECHUGA HEVIA, referring to paragraph 8 of the report concerning the amendment to "Basic Law: The Knesset" which prevented racist movements from running for election, said that article 4 required States parties, in addition, to declare all dissemination of racist ideas an offence punishable by law and to disband racist organizations.

88. Paragraph 14 reported the case of a person convicted for writing an article justifying the killing of non-Jews. In what publication had the article appeared and had the publishers been punished? Paragraph 17 stated that holders of concessions for cable television must not transmit any broadcast containing racial incitement. Did the same rule apply to press material?

89. Paragraph 30 acknowledged that there was no clear Supreme Court decision in support of the norms prohibiting discrimination in private transactions. That omission obviously encouraged discriminatory acts in the private sector. According to paragraph 31, the 1995 Amendment to the Equal Opportunity in Employment Law 1988 prohibited discrimination by an employer with a staff of six or more persons. The implication seemed to be that an employer with fewer than six employees was free to practise discrimination.

90. Was it true that the "Basic Law: Human Liberty and Honour" failed to mention the right to equality and stressed the ethnicity of the State of Israel, thereby depriving the Arab minority of constitutional protection against discrimination?

91. He asked the delegation to comment on reports that the Government's land use plan for 1998 provided for the building of 23,000 dwelling units, none of which would be located in Arab villages.

92. Arabs with a criminal record were allegedly twice as likely to be convicted by a court than Jews. According to a study undertaken in 1990 by the Department of Criminology of the Hebrew University, 30 per cent of young Arabs, compared with only 2 per cent of young Jews, received custodial sentences. In 1993, 80 per cent of young persons in custody were Arabs.

93. No academic institution existed to preserve and promote the Arabic language in Israel. Although Arabs constituted 18 per cent of the population, there was no Arabic-language university in Israel.

94. Mr. VALENCIA RODRIGUEZ agreed with Mr. Lechuga Hevia that article 4 required the disbandment of such movements as Kach and Kahana Chai and the punishment of their leaders and participants.

95. What practical results had followed the entry into force of the 1995 Amendment to the Equal Opportunity in Employment Law 1988 which introduced a prohibition on various kinds of discrimination?

96. The definition of racism in Section 144A of the Penal Law, 1977, as amended in 1986 and 1992, was not consistent with that contained in article 1 of the Convention. Paragraph 29 acknowledged that the outlawing of discrimination by individuals against each other had developed slowly. He urged the Government of Israel to step up action in that area to ensure

balanced progress in the fight against racial discrimination. He welcomed the affirmative action on behalf of minority groups, particularly Ethiopian Jews and Arabs, described in the report. He trusted that the Government would keep the Committee informed of progress in that area with respect to all minorities. There was very little information in the report on the implementation of article 5.

97. With regard to article 6, it was recognized that an impartial and independent judicial system was the main bulwark of the individual against acts of racial discrimination. He stressed the importance of the office of Public Complaints Commissioner and suggested that it should be reinforced in the future. He asked for additional information on the Commissioner's work and on specific court cases.

98. Mr. ABOUL-NASE requested the delegation to provide the Committee with a map of Israel at the following meeting.

The meeting rose at 6 p.m.